Supreme Court U.S.
FILED
JUL 16 2015
OFFICE OF THE CLERK

No. 14-857

In the Supreme Court of the United States

CAMPBELL-EWALD COMPANY,
Petitioner,
v.
JOSE GOMEZ,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 16, 2015
CERTIORARI GRANTED MAY 18, 2015

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[1] "C.A.E.R. ___" refers to the Excerpts of Record filed in the United States Court of Appeals for the Ninth Circuit. "C.A.S.E.R. ___" refers to the Supplemental Excerpts of Record filed in that same court. Documents which were filed under seal below have, with the consent of the parties, been reproduced publicly.

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ITEMS PREVIOUSLY REPRODUCED

In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (January 16, 2015)

Opinion of the United States Court of Appeals for the Ninth Circuit, *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871 (9th Cir. 2014).....1a

Order of the United States District Court for the Central District of California Regarding Defendant's Motion for Summary Judgment and Motion for Summary Judgment on the Pleadings, *Gomez v. Campbell-Ewald Co.*, No. CV 10-02007 DMG (CWx), 2013 WL 655237 (C.D. Cal. Feb. 22, 2013).....22a

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Offer of Judgment Pursuant to Federal Rule of Civil Procedure 68, *Gomez v. Campbell-Ewald Co.*, No. CV 10-2007 DMG (CWx) (C.D. Cal. Jan. 5, 2011), ECF No. 31 (with Exhibit 1) 52a

Settlement Offer, *Gomez v. Campbell-Ewald Co.*, No. CV 10-2007 DMG (CWx), dated Jan. 5, 2011 (C.D. Cal. Mar. 11, 2011), ECF No. 45-8 (with enclosure) 57a

Order of the United States Court of Appeals for the Ninth Circuit for Stay of the Issuance of the Mandate, *Gomez v. Campbell-Ewald Co.*, No. 13-55486 (9th Cir. Oct. 24, 2014) 62a

RELEVANT DOCKET ENTRIES

U.S. Court of Appeals for the Ninth Circuit
Case No. 13-55486

Date Filed	#	Docket Text
		* * *
06/24/2013	8	Filed (ECF) Appellee Campbell-Ewald Company Motion to dismiss for lack of jurisdiction. Date of service: 06/24/2013. [8680038] (LAW) [Entered: 06/24/2013 06:42 PM]
		* * *
08/02/2013	13	Filed (ECF) Appellant Jose Gomez response opposing motion (,motion to dismiss for lack of jurisdiction). Date of service: 08/02/2013. [8728897] (MJM) [Entered: 08/02/2013 03:05 PM]
		* * *
08/09/2013	16	Filed (ECF) Appellee Campbell-Ewald Company reply to response (,motion to dismiss for lack of jurisdiction). Date of service: 08/09/2013. [8738337] (LAW) [Entered: 08/09/2013 04:16 PM]
08/20/2013	17	Filed order (Appellate Commissioner):Appellee's motion to dismiss this appeal for lack of

		jurisdiction is denied without prejudice to renewing the arguments in the answering brief. See Nat'l Indus. v. Republic Nat'l Life Ins. Co., 677 F.2d 1258, 1262 (9th Cir. 1982) (stating that merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss). The opening brief and excerpts of record are due September 30, 2013; the answering brief is due October 30, 2013; and the optional reply brief is due within 14 days after service of the answering brief.. (MOATT) [8748930] (KKW) [Entered: 08/20/2013 09:13 AM]
		* * *
11/15/2013	20	Submitted (ECF) Opening Brief and excerpts of record for review. Submitted by Appellant Jose Gomez. Date of service: 11/15/2013. [8865258] (EMM) [Entered: 11/15/2013 07:36 PM]
		* * *
01/15/2014	29	Submitted (ECF) Answering Brief for review. Submitted by Appellee Campbell-Ewald Company. Date of service: 01/15/2014. [8940476] (LAW) [Entered: 01/15/2014 04:48 PM]

01/15/2014	30	Filed (ECF) Appellee Campbell-Ewald Company petition for rehearing en banc (from 08/20/2013 opinion). Date of service: 01/15/2014. [8940546] (LAW) [Entered: 01/15/2014 05:54 PM]
		* * *
02/28/2014	39	Submitted (ECF) Reply Brief for review. Submitted by Appellant Jose Gomez. Date of service: 02/28/2014. [8997634] (EMM) [Entered: 02/28/2014 01:32 PM]
03/03/2014	40	No active judge has requested a vote to hear this case initially en banc within the time allowed by General Order 5.2a. The request is therefore denied. [8998627] (HH) [Entered: 03/03/2014 09:35 AM]
		* * *
09/19/2014	49	FILED OPINION (FORTUNATO P. BENAVIDES, KIM MCLANE WARDLAW and RICHARD R. CLIFTON) VACATED and REMANDED. The costs shall be taxed against the Defendant-Appellee. Judge: FPB Authoring, FILED AND ENTERED JUDGMENT. [9245863] (RP) [Entered: 09/19/2014 07:06 AM]

10/09/2014	50	Filed (ECF) Appellee Campbell-Ewald Company Motion to stay the mandate. Date of service: 10/09/2014. [9272415] (CMR) [Entered: 10/09/2014 06:41 PM]

* * *

10/23/2014	53	Filed (ECF) Appellant Jose Gomez response opposing motion (,motion to stay the mandate). Date of service: 10/23/2014. [9288776] (EMM) [Entered: 10/23/2014 10:58 PM]
10/24/2014	54	Filed order (FORTUNATO P. BENAVIDES, KIM MCLANE WARDLAW and RICHARD R. CLIFTON) Appellee's motion for a stay of the issuance of the mandate pending a petition for writ of certiorari is GRANTED. Fed. R. App. P. 41(b). The mandate shall be stayed for 90 days from the filing date of this order pending the filing of a petition for writ of certiorari in the Supreme Court. If a petition for writ of certiorari is filed, the stay shall continue until final disposition by the Supreme Court. IT IS SO ORDERED. [9289794] (SM) [Entered: 10/24/2014 02:16 PM]

* * *

05/19/2015	57	Received notice from the Supreme Court. Petition for certiorari GRANTED on 05/18/2015. Supreme Court Number 14-857. [9543453] (RR) [Entered: 05/19/2015 07:29 PM]

RELEVANT DOCKET ENTRIES

U.S. District Court
for the Central District of California
Case No. 2:10-cv-02007-DMG-CW

Date Filed	#	Docket Text
03/19/2010	1	COMPLAINT against Defendant Campbell-Ewald Company. Case assigned to Judge Dolly M. Gee for all further proceedings. Discovery referred to Magistrate Judge Carla Woehrle.(Filing fee $ 350: PAID) Jury Demanded., filed by plaintiff Jose Gomez.(ghap) (ds). (Entered: 03/22/2010)
		* * *
06/02/2010	9	STIPULATION for Extension of Time to File Motion For Class Certification filed by plaintiff Jose Gomez. (Attachments: # 1 Declaration Of Sean Reis In Support of Stipulation To Move Date For Filing Motion For Class Certification, # 2 Proposed Order Moving Date For Filing Motion For Class Certification)(Reis, Sean) (Entered: 06/02/2010)
06/03/2010	10	ORDER MOVING DATE FOR FILING MOTION FOR CLASS CERTIFICATION (L.R. 23-3) by Judge Dolly M. Gee 9 : 1.

		Stipulation of the Parties is approved; and 2. Deadline for Plaintiff to file his motion for class certification is extended until after all Parties have answered and presented a proposed discovery schedule to the Court setting forth the deadlines and requirements associated with the parties Rule 26(f) conference and report. (kpa) (Entered: 06/04/2010)
		* * *
11/19/2010	23	ANSWER to Complaint (Discovery), Complaint (Discovery) 1 filed by Defendant Campbell-Ewald Company. (Wytsma, Laura) (Entered: 11/19/2010)
		* * *
01/05/2011	31	NOTICE of Offer of Judgment filed by Defendant Campbell-Ewald Company. , Pursuant to Federal Rule of Civil Procedure 68 (Attachments: # 1 Exhibit 1) (Wytsma, Laura) (Entered: 01/05/2011)
01/19/2011	32	NOTICE OF MOTION AND MOTION to Strike And Quash Defendant's Improper Rule 68 Offer Of Judgment Notice of Offer of Judgment 31 filed by plaintiff Jose Gomez. Motion set for hearing

on 3/21/2011 at 09:30 AM before Judge Dolly M. Gee. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Exhibit 1 Coversheet, # 3 Proposed Order)(Reis, Sean) (Entered: 01/19/2011)

01/19/2011	33	NOTICE OF MOTION AND MOTION to Certify Class filed by plaintiff Jose Gomez. Motion set for hearing on 3/21/2011 at 09:30 AM before Judge Dolly M. Gee. (Attachments: # 1 Memorandum Of Points And Authorities, # 2 Declaration Of Michael J. McMorrow, # 3 Proposed Order)(Reis, Sean) (Entered: 01/19/2011)

* * *

03/11/2011	44	OPPOSITION re: MOTION to Certify Class 33 filed by Defendant Campbell- Ewald Company. (Wytsma, Laura) (Entered: 03/11/2011)

* * *

03/11/2011	47	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendant Campbell-Ewald Company. Motion set for hearing on 4/8/2011 at 02:30 PM before Judge Dolly M. Gee. (Attachments: # 1 Proposed Order)(Wytsma, Laura)

(Entered: 03/11/2011)

03/11/2011	48	OPPOSITION re: MOTION to Strike And Quash Defendant's Improper Rule 68 Offer Of Judgment Notice of Offer of Judgment 31 MOTION to Strike And Quash Defendant's Improper Rule 68 Offer Of Judgment Notice of Offer of Judgment 31 32 filed by Defendant Campbell-Ewald Company. (Wytsma, Laura) (Entered: 03/11/2011)

* * *

03/25/2011	58	REPLY In Support of Motion to Strike and Quash, and Response in Opposition to Motion to Dismiss MOTION to Dismiss Case 47 , MOTION to Strike And Quash Defendant's Improper Rule 68 Offer Of Judgment Notice of Offer of Judgment 31 MOTION to Strike And Quash Defendant's Improper Rule 68 Offer Of Judgment Notice of Offer of Judgment 31 32 filed by Plaintiff Jose Gomez. (Attachments: # 1 Exhibit A, # 2 Declaration of Michael J. McMorrow) (McMorrow, Michael) (Entered: 03/25/2011)
03/25/2011	59	REPLY in Support of Motion for Class Certification MOTION to Certify Class 33 filed by Plaintiff Jose Gomez. (Attachments: # 1

Declaration of Daniel Rostnthal, # 2 Declaration of Jose Gomez, # 3 Exhibit A to Declaration of Jose Gomez, # 4 Declaration of Michael J. McMorrow, # 5 Exhibit A to Declaration of Michael J. McMorrow, # 6 Exhibit B to Declaration of Michael J. McMorrow, # 7 Exhibit C to Declaration of Michael J. McMorrow, # 8 Exhibit D to Declaraiton of Michael J. McMorrow, # 9 Exhibit E to Declaration of Michael J. McMorrow, # 10 Exhibit F to Declaration of Michael J. McMorrow, # 11 Exhibit G to Declaration of Michael J. McMorrow)(McMorrow, Michael) (Entered: 03/25/2011)

* * *

04/01/2011 63 REPLY IN SUPPORT MOTION to Dismiss Case 47 filed by Defendant Campbell-Ewald Company. (Wytsma, Laura) (Entered: 04/01/2011)

* * *

04/08/2011 67 ORDER RE: (1) PLAINTIFF'S MOTION TO STRIKE; (2) PLAINTIFF'S MOTION FOR CLASS CERTIFICATION; AND (3) DEFENDANT'S MOTION TO DISMISS by Judge Dolly M. Gee:

		Defendant's Motion to Dismiss/Motion for Summary Judgment 47 is DENIED. Plaintiff's Motion to Strike and Quash Defendant's Rule 68 Offer 31 32 is GRANTED. The Court defers its ruling on Plaintiff's Motion for Class Certification 33 until after the parties have conducted class discovery: (a) The parties shall meet and confer regarding a schedule for class discovery and shall file an Amended Joint Rule 26(f) Report regarding their proposed schedule by 4/22/2011; (b) The parties shall meet and confer regarding a new schedule for supplemental briefing, if any, on Plaintiff's Motion for Class Certification and shall include their proposed schedule in their Amended Joint Rule 26(f) Report; (c) The parties shall appear for a telephonic Status Conference on 5/2/2011 at 11:00 AM. (gk) (Entered: 04/11/2011)
		* * *
10/18/2011	115	NOTICE OF MOTION AND MOTION for Summary Judgment filed by Defendant Campbell-Ewald Company. Motion set for hearing on 12/9/2011 at 03:00 PM before Judge Dolly M. Gee. (Attachments: # 1 Proposed Order)

(Reilly, Christine) (Entered: 10/18/2011)

* * *

10/25/2011 123 OPPOSITION to MOTION for Summary Judgment 115 [PLAINTIFFS RESPONSE TO DEFENDANTS REQUEST FOR MODIFIED BRIEFING SCHEDULE] filed by Plaintiff Jose Gomez. (Reis, Sean) (Entered: 10/25/2011)

* * *

11/07/2011 131 NOTICE OF MOTION AND MOTION for Judgment on the Pleadings as to Pursuant to Rule 12(c) of the FRCP filed by defendant Campbell-Ewald Company. Motion set for hearing on 12/5/2011 at 09:30 AM before Judge Dolly M. Gee. (Attachments: # 1 Proposed Order)(Reilly, Christine) (Entered: 11/07/2011)

* * *

11/14/2011 142 MEMORANDUM in Opposition to MOTION for Judgment on the Pleadings as to Pursuant to Rule 12(c) of the FRCP MOTION for Judgment on the Pleadings as to Pursuant to Rule 12(c) of the FRCP 131 filed by Plaintiff Jose Gomez. (Attachments: # 1 Declaration Of Evan M. Meyers, # 2 Exhibit A To

		Declaration of Evan M. Meyers)(Reis, Sean) (Entered: 11/14/2011)
		* * *
11/21/2011	145	REPLY in support of MOTION for Judgment on the Pleadings as to Pursuant to Rule 12(c) of the FRCP MOTION for Judgment on the Pleadings as to Pursuant to Rule 12(c) of the FRCP 131 filed by Defendant Campbell-Ewald Company. (Reilly, Christine) (Entered: 11/21/2011)
		* * *
03/05/2012	174	MEMORANDUM in Opposition to MOTION for Summary Judgment 115 filed by Plaintiff Jose Gomez. (Attachments: # 1 Declaration Of Evan Meyers, # 2 Exhibit A to Meyers Declaration, # 3 Exhibit C to Meyers Declaration, # 4 Exhibit F to Meyers Declaration, # 5 Exhibit P to Meyers Declaration, # 6 Exhibit Q to Meyers Declaration, # 7 Exhibit S to Meyers Declaration, # 8 Supplement Separate Statement of Genuine Disputes Of Material Fact And Additional Statement Of Undisputed Material Fact, # 9 Proposed Order Denying Defendant's Motion for Summary Judgment)(Reis, Sean) (Entered:

		03/05/2012)
		* * *
03/19/2012	200	REPLY in support MOTION for Summary Judgment 115 filed by Defendant Campbell-Ewald Company. (Reilly, Christine) (Entered: 03/19/2012)
		* * *
03/20/2012	210	SEALED DOCUMENT- REPLY in Support of Defendant Campell-Ewald Company's MOTION for Judgment.(mat) (Entered: 03/29/2012)
		* * *
02/22/2013	231	ORDER RE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION FOR JUDGMENT ON THE PLEADINGS by Judge Dolly M. Gee: Defendant Campbell-Ewald Company's Motion for Summary Judgment 115 is GRANTED and its Motion for Judgment on the Pleadings 131 is DENIED. (gk) (Entered: 02/22/2013)
02/22/2013	232	JUDGMENT by Judge Dolly M. Gee: IT IS HEREBY ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of Defendant Campbell-Ewald Company and against Plaintiff Jose Gomez, who shall take nothing.

		(MD JS-6, Case Terminated). (gk) (Entered: 02/22/2013)
		* * *
03/22/2013	238	NOTICE OF APPEAL to the 9th CCA filed by plaintiff/appellant Jose Gomez. Appeal of Order on Motion for Summary Judgment, Order on Motion for Judgment on the Pleadings,, 231 , Judgment 232 (Appeal fee of $455 paid.) (Attachments: # 1 Judgment, # 2 Order Granting Summary Judgment) (McMorrow, Michael) (Entered: 03/22/2013)
		* * *

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FILED
2010 MAR 19 PM 1:47
CLERK US DISTRICT COURT
CENTRAL DISTRICT OF CALIF
LOS ANGELES
BY: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals,	)	Case No. CV10 2007 DMG (CWx)
Plaintiff,	)	**CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**
v.	)	
CAMPBELL-EWALD COMPANY, a Delaware corporation,	)	1) Violation of 47 U.S.C. § 227
Defendant.	)	DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Jose Gomez brings this class action complaint against Defendant Campbell-Ewald

Company ("Campbell-Ewald") to stop Defendant's practice of making unsolicited text message calls to cellular telephones, and to obtain redress for all persons injured by its conduct. This court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332 (d). Plaintiff, for his class action complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE CASE

1. Defendant Campbell-Ewald, a self-described "top 25 American advertising agency," designs and implements advertising campaigns nationwide for clients such as General Motors, Kaiser Permanente and Alltel Wireless.

During one such campaign for the U.S. Navy, Defendant Campbell-Ewald engaged in an especially pernicious form of marketing: the unauthorized transmission of advertisements in the form of "text message" calls to the cellular telephones of consumers throughout the nation.

2. By effectuating these unauthorized text message calls (hereinafter, "wireless spam"), Defendant has caused consumers actual harm, not only because consumers were subjected to the aggravation that necessarily accompanies wireless spam, but also because consumers frequently have to pay their cell phone service providers for the receipt of such wireless spam.

3. In order to redress these injuries, Plaintiff, on behalf of himself and a nationwide class of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("47

U.S.C. § 227"), which prohibits unsolicited voice and text calls to cell phones.

4. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to cease all wireless spam activities, and an award of statutory damages to the class members, together with costs and reasonable attorneys' fees.

PARTIES

5. Plaintiff is a resident of Illinois.

6. Defendant Campbell-Ewald is a Delaware corporation who at all relevant times maintained its headquarters and principal place of business in Michigan. A subsidiary of the Interpublic Group of Companies, Inc., Campbell-Ewald is a global advertising agency that provides marketing services to its clients throughout the United States, including this district.

JURISDICTION & VENUE

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), because (a) at least one member of the putative class is a citizen of a state different from Defendant, (b) the amount in controversy exceeds $5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

8. This Court has personal jurisdiction over the Defendant because the acts alleged herein originated in this District and because the Defendant maintains offices in this District.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because Defendant resides in this District and because a substantial part of the events giving rise to the claim occurred in this District, as the

Defendant's agent that transmitted the text message calls also resides in this District.

COMMON ALLEGATIONS OF FACT

10. In recent years, marketers who often have felt stymied by federal laws limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to alternative technologies through which to send bulk solicitations cheaply.

11. One of the newest types of such bulk marketing is to advertise through Short Message Services. The term "Short Message Service" or "SMS" is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters.

12. An "SMS message" is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient's cell phone rings, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently carried on their owner's person, calls to cellular telephones, including SMS messages, may be instantly received by the called party virtually anywhere worldwide.

13. Unlike more conventional advertisements, SMS calls, and particularly wireless spam, can actually cost their recipients money, because cell phone users must frequently pay their respective wireless service providers either for each text message call they receive or incur an usage allocation deduction to their text plan, regardless of whether or not the message is authorized.

14. Over the course of an extended period beginning in at least 2006, Defendant directed the mass

transmission of wireless spam to the cell phones of consumers nationwide to advertise on behalf of the U.S. Navy.

15. For instance, on or about May 11, 2006, Plaintiffs cell phone rang, indicating that a text call was being received.

16. The "from" field of such transmission was identified cryptically as "43704," a format which Plaintiff later learned was an abbreviated telephone number known as an SMS short code licensed and operated by Defendant's agent. The body of such text message read:

DESTINED FOR SOMETHING BIG? DO IT IN THE NAVY. GET A CAREER. AN EDUCATION. AND A CHANCE TO SERVE A GREATER CAUSE. FOR A FREE NAVY VIDEO CALL [redacted]

17. Defendant's and its agent's use of an SMS short code enabled Defendant's mass transmission of wireless spam to a list of cellular telephone numbers.

18. Indeed, over the next several months, Plaintiff received additional spam text message advertisements from the same short code, in knowing violation of Plaintiff's privacy.

19. At no time did Plaintiff consent to the receipt of such text message calls from Defendant.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure (b)(2) and Rule 23(b)(3) on behalf of himself and a class (the "Class") defined as follows: all persons in the United States and its Territories who received one or more unauthorized text message advertisements from Defendant.

21. In order to make its *en masse* transmissions of text message advertisements economical, Defendant and its agents used one or more short codes to transmit the text messages to thousands of consumers' cellular telephone numbers. As such, the Class consists of thousands of individuals and other entities, making joinder impractical.

22. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

23. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

24. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class in transmitting the wireless spam at issue, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class.

25. The factual and legal bases of Defendant's liability to Plaintiff and to the other members of the Class are the same, resulting in injury to the Plaintiff

and to all of the other members of the Class as a result of the transmission of the wireless spam alleged herein. Plaintiff and the other Class members have all suffered harm and damages as a result of Defendant's unlawful and wrongful conduct as a result of the transmission of the wireless spam.

26. There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

(a) Does the wireless spam Defendant distributed violate 47 U.S.C. § 227?

(b) Are the Class's members entitled to treble damages based on the willfulness of Defendant's conduct?

FIRST CLASS ACTION

(Violation of 47 U.S.C. § 227: On behalf of the Class)

27. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

28. Defendant made unsolicited commercial text calls, including the message transcribed above, to the wireless telephone numbers of the Class. Each such text message call was made using equipment that had the capacity to store or produce telephone numbers using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendant was able to effectively send text messages to thousands of consumers' wireless telephone numbers without human intervention.

29. These text calls were made *en masse* and without the prior express consent of the Plaintiff and the other members of the Class to receive such wireless spam.

30. Defendant has, therefore, violated 47 U.S.C. § 227(b)(l)(A)(iii). As a result of Defendant's conduct, the members of the class suffered damages by, *inter alia*, having to pay their respective wireless carriers for the text messages where applicable, and, under section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of $500.00 in damages for each violation of such act.

31. Because Defendant had knowledge that Plaintiff and the Class did not consent to the receipt of the aforementioned wireless spam, the Court should, pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by the Plaintiff and the other members of the Class.

WHEREFORE, Plaintiff Jose Gomez, on behalf of himself and the Class, prays for the following relief:

1. An order certifying the Class as defined above;
2. An award of actual and statutory damages;
3. An injunction requiring Defendant to cease all wireless spam activities;
4. An award of reasonable attorneys' fees and costs; and
5. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: March 19, 2010

By: /s/ Sean P. Reis

Sean P. Reis
EDELSON MCGUIRE, LLP
Attorneys for JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals, Plaintiff,	)	Case No. 10-cv-2007-DMG (CWx)
v.	)	Honorable Dolly M. Case
CAMPBELL-EWALD COMPANY, a Delaware corporation, Defendant.	)	

VIDEOTAPE DEPOSITION
OF
LEE A. BUCHSCHACHER
January 6, 2012

* * *

[24]

A. Yes, they prepared it.

Q. And you reviewed what they drafted and sent to you?

A. That is correct.

Q. Did you make changes to what they sent to you?

A. Yes, I did.

Q. Do you recall what changes you made from that first draft that they sent you?

A. Just a few minor changes, mainly about my years of service in the government, my position in the organization, and I believe the Admiral at the time, the name of the Admiral.

Q. Anything else you recall that you changed?

A. Not really.

Q. So other than that, you believe that you did not change the declaration that Loeb & Loeb had drafted?

A. No, I did not change it, other than those errors.

Q. Thank you. Do you still have a copy of that first draft that they sent you?

A. No, I do not.

* * *

[27]

* * *

A. That is correct, but I was satisfied with the wording as it appears and as my layman understanding of what word.

Q. What is your layman's understanding of that word?

A. That they act in and for the Navy advertising effort.

Q. They act for the Navy advertising effort.

A. Yes.

Q. Is your understanding of - - is every advertising company that the Navy or the NRC - - strike that.

I want to make clear here. When I refer to the Navy, I'm referring to it in laymen's terms as including the Navy and the NRC. If for any time you believe

that it's necessary to make that distinction, by all means, please let me know.

A. I will.

Q. Okay. Do you understand what the legal [28] definition of the term agent is?

A. I do not.

Q. You're not a lawyer, correct?

A. That's correct.

Q. Did Loeb & Loeb explain to you what they believe the word agent meant in the context of this declaration?

A. No, they did not; however, they did say there were certain terms that will be used that have legal definitions that have implications that are far beyond the understanding of most laymen.

Q. And most lawyers for that matter, but that's a different story.

But other than that sentence, they didn't explain to you what they believed the term agent meant in the context of either this litigation or your Declaration?

A. No, they did not.

Q. Do you know the legal difference between agent and a contractor?

A. No, I do not.

Q. So is it fair to say that when you executed your Declaration, you were not intending to testify that Campbell-Ewald was the Navy's agent as [29] that term is legally defined?

A. I would be at a loss to say yes.

Q. I just want to clarify – and sorry to exhaust this –

A. Sure.

Q. – the total amount of conversations you had with Loeb. It was in July approximately, maybe the summer, which was the initial conversation?

A. The heads-up.

Q. The heads-up?

A. Uh-huh.

Q. You had – the second conversation was the substantive 90 minute conversation with Ms. Reilly?

A. Yes.

Q. And you said there was a third one. What was the third conversation?

A. Well, the third conversation, of course, was the preparation for the testimony.

Q. And when did that take place, that third conversation?

A. Yesterday – no – yes, yesterday, Thursday.

* * *

[36]

Q. What was the position that you held immediately before retirement?

A. My position immediately before retirement was Strategic Planning Officer for the Marketing and Advertising Department; however, that was not the position I was in during the 2006 campaign.

Q. What was the position that you were in during that 2006 campaign?

A. I was Deputy Director of the Marketing and Advertising Plans Division and supervisor of the Program Advertising Managers.

Q. Is the Strategic Marketing Plans Officer – and that's not maybe the precise term – but the position

that you had upon retirement, was that for lack of a better word a level above the position that you held in 2006?

A. I don't think so. I didn't get any more pay.

Q. As of 2011, who did you report to?

A. In 2011?

Q. Yes.

A. I reported to Commander Phillips.

Q. Did anyone report to you?

A. Not at that time.

* * *

[39]

Q. So the NRC puts it together?

A. Yes.

Q. And gives it to in this situation Campbell-Ewald?

A. Right, as the official document of the Commander's guidance for the next year.

Q. And ultimately then you ask Campbell-Ewald to come up with advertising ideas, strategies and campaigns to further the goals that you suggested?

A. Right. We rely on their expertise to figure out which medias and the mix of medias that is most likely – with the money we have available most likely to get the biggest bang for our buck and success.

Q. You also mention Dan Rioux – is it Reo or Rioux?

MR. GAULZETTI: Rioux.

Q. (By Mr. Meyers) Rioux. You mentioned Dan Rioux. Can you tell me who Dan Rioux is?

A. Dan Rioux is a media planner for Campbell-Ewald. I have known him for, I guess, about twelve years, eleven or twelve years, since Campbell-Ewald has been on the account.

* * *

[64]

* * *

Q. Does the Navy authorize Campbell-Ewald employees to directly speak with the potential recruits about joining the Navy?

A. Technically, yes. There are subcontractors who operates our toll free number, have what you call 1-800 U.S.A. Navy.

You say I'm interested in being a pilot, and they say, well, what's your education level, and they will ask them, you know, if they have a college degree or not, how old they are, very rudimentary blueprinting.

So in that regards, they do have contact with individuals, but it's their subcontractor who operates the toll free number.

Q. Does Campbell-Ewald – are you aware of any Campbell-Ewald employees, actual employees who directly speak with potential recruits about whether to join the Navy?

A. No.

* * *

[68]

* * *

Q. So the Navy doesn't say we want you to do TV, internet, direct – that's up to the advertising company

to figure out the best way to maximize the Navy's budget –

A. That's correct?

Q. –in light of the Navy's recruitment goals?

A. Yes. Now, we quite frankly have a few white elephants that we like to feed. For example, we want to be in the Army Navy game every year. And in order to do that, we may have to be in some of the college games so we can be in the Army Navy game.

But other than things like that, we don't say, oh, yeah, we want you to spend all this money in television.

Q. You don't want to be in the game, you want to win the game, right?

A. Navy wants to win the game.

* * *

[80]

* * *

Q. Did Campbell-Ewald make these annual presentations every year since they became the advertising company of record?

A. Yes, they have.

Q. Were you involved in receiving or hearing the presentation every year?

A. Yes, I was.

Q. Did you – did the company that you – the advertising company that you used prior to 2000, BBDO, did they do the same thing, an annual report?

A. No, they did not. It was a different process.

Under BBDO, we told them what they were going to do. We actually told them they were going to do X

amount of dollars in television, X amount of dollars in magazines and this and that and what have you.

Of course, back then our budgets were a lot smaller. So we did what was called an ad plan which we sent to the advertising agency, again, incorporating the similar stuff that we give [81] Campbell-Ewald, in other words, what our recruiting goals are, when we have to meet them, what the difficulties are and the amount of money available, but we also then dictated to them what they were going to do, and they would come back and ask to massage it.

Q. But that process changed when Campbell-Ewald became involved?

A. Yes, it did.

Q. It was a little bit more broader. It was -- as we talked about, it was a broader budget and goals, and then it was deferred to Campbell-Ewald to come up with the solution?

A. First of all, under BBDO, it was a cost plus contract, so that meant what BBDO would give us, we'd say I'd like to have a magazine ad for general enlisted recruiting, and it should have something about high technology and adventure in the Navy.

They would come back and give us a proposal of we need -- you know, we need 40 direct hours and out-of-pocket expense of about $2,000.00 and we'll produce a nice comp for you, comprehensive design.

[82] We would approve that, and then they would actually do the work. When it came time to bill, they would bill 80 hours, and we said, wait a minute, we approved 40 but you billed 80. Well, what can I say, we never really got into this before, and, you know, we're kind of new to this and we really don't know. It's a new subject for us, and they weaseled their way out of it.

So the Admiral was very frustrated, and that's when she decided to end the contract and create a new contract that was a firm fixed price.

Q. And in addition to changing to a firm fixed price contract, you also changed the way that – the deference to the advertising company?

A. Right.

Q. Okay.

A. It was much more of a partnership with Campbell-Ewald.

Q. Were you involved in the discussion of this annual plan after it was presented to you?

A. Yes.

Q. And ultimately was the plan approved?

A. Yes, with modifications. I can't tell you what the modifications were, but there's always some ...

* * *

[84]

* * *

A. Yes, we do. We recruit 17 year olds with parents permission, and we go up to age 34 or 35, somewhere around 34, and we have waivers for medical officers and chaplains. And if we need somebody bad enough, we can waiver it to a point.

Q. But 18 to 24 is the target audience of most of the advertising?

A. Yes. It makes it convenient because we can buy media that will reach 18 to – and that are measured to reach 18 to 24 year olds. It's more difficult if you raise the upper end and more costly, by the way.

Q. When the Navy accepted Campbell-Ewald's proposal for this Wireless/Mobile Marketing campaign in December of 2005, were there any – at the time, were there any further discussions of what that campaign would be other than what's written here?

A. No.

Q. The Navy just liked the idea of contacting people via text message as a campaign?

A. Right.

* * *

[86]

A. I know I reviewed some copy that they wanted to use on the text, and I don't remember if this – launched this in July or – I don't know if it's in here or not, but that would be – I saw an E-Mail that you should have a copy of where I corrected the text.

Q. You know, I actually have that E-Mail. Let's put it in front of you now just to verify that.

A. Okay. I thought that it was all included in here. That's why I'm looking for it in here in this pile.

Oh, yes, here it is. It was April 2006.

Q. April 2006 was the first time you had heard about the 2006 text campaign?

A. No, no, not the campaign. I heard about that when we approved the thing, but we were going to do it, but it wasn't until we got some proposed copy.

Q. And that's what I want to ask you about. After it was approved and agreed that Campbell-Ewald should go forward with some text campaign, when was the next time that you were contacted about what that 2006 text campaign would look like or how it [87] would go forward?

A. Probably the 27th of April here from Daidria Grayson.

Q. Were you personally involved in telling Campbell-Ewald how to go forward with the text campaign?

A. Well, we approved – when you say how, we approved all copy and all images.

Q. Understood. So other than the approval of the copy -- and we'll talk about that E-Mail in a second -- were you involved in the approval or the planning of the actual 2006 Text Message Campaign?

A. Again, approval of the copy.

Q. Other than the approval of the copy –

A. Sure.

Q. That's it?

A. That's it.

Q. Are you aware of anyone at the Navy or the NRC being involved in the approval or planning of the 2006 Text Message Campaign prior to the approval of copy?

A. Maybe Cornell Galloway because it was in the general enlisted area that this text campaign was.

[88] Q. Who would the NRC's – on this 2006 campaign, did the Navy have what I would call a point person who was responsible for working with Campbell-Ewald on that campaign?

A. Well, again, our program advertising manager for the general enlisted program is Cornell Galloway, and he would work a little closer, but I approved the copy after it was staffed at the headquarters. We staff it.

Q. What do you mean by staffing?

A. Well, some copy is very long, very involved, very detailed. We have to make sure that the offer we are making is technically correct, tactically correct; in other words, if you say you'll join the Navy and fly airplanes, it has to be corrected and provided you meet the requirements.

And so we staff it to our recruiting operations people. Sometimes we'll staff it to the JAG if we have a question of legality, but usually we don't. They usually find more problems than not.

But on simple things like this, it was just staffed within the Advertising Department.

* * *

[93]

* * *

Q. And they wrote your understanding is they wrote this recommendation after the December 2005 general plan was approved? This is the specific plan that they came up with?

A. (Witness nods head).

Q. Were you involved in drafting this recommendations document?

A. No, no.

Q. Were you involved personally in giving any input into what would go into this recommendations?

A. No.

Q. Are you aware of anyone with the Navy that was involved in drafting the recommendations?

A. No one from the Navy was involved in drafting this. This is Campbell-Ewald's recommendation to us.

Q. So no one in the Navy was involved in providing input into what would go into these recommendations.

A. No.

* * *

[97]

A. Yeah. They do that a lot in their briefings, and sometimes it's stuff we already know and sometimes it isn't.

Q. And in this case it was something that you had maybe some familiarity with but you didn't know a lot of details about?

A. That's correct.

Q. There were multiple recommendations included in this March 2006 document, is that correct?

A. That's correct.

Q. Did the Navy ultimately approve all of the recommendations that were in here, if you know?

A. Yes, I believe so.

Q. In this document, let's turn to Page 13. It says MindMatics at the top.

A. Yes.

Q. Was your review of this document the first time you were aware of the company MindMatics?

A. Yes.

Q. Was MindMatics the vendor involved in transmitting the 2006 text messages?

A. I don't know. I guess.

Q. Is it fair to say that you were not involved [98] in choosing MindMatics as the vendor?

A. Right. We don't select the vendors.

Q. So no one from the Navy was involved in selecting MindMatics as the vendor then?

A. We have nothing to compare it with.

Q. And is that true for most campaigns above and beyond text messages.

A. Yes.

Q. That Campbell-Ewald is the one who decides the vendor typically?

A. Right, and usually we have some discussions if we have familiarity with it. For example, in the magazines, they will say we want to use Sports Illustrated. Well, we know Sports Illustrated is a very expensive publication and overreaches, and sometimes we might say, well – but we have firsthand knowledge of those. These are vendors we have no knowledge of.

Q. When you don't have knowledge, you typically defer to

A. Defer to the agency.

Q. Okay.

A. That's why we pay them the big bucks as they say.

* * *

[108]

* * *

Q. And are you familiar with which contract that was that governed the big contract as of May 2006?

A. Yes, I'm familiar.

Q. Prior to the break, you mentioned that it was important to the Navy to be on the cutting edge of technology?

A. (Witness nods head).

Q. Is that correct?

A. That's correct.

Q. Did the Navy specifically tell Campbell-Ewald that it wanted to utilize text messaging for advertising?

A. Not that I know of, but it was generally stated by several directors of advertising that we -- that Campbell-Ewald should be looking at the emerging technologies and where appropriate to maximize our effectiveness with their use.

Q. So the Navy stated that they wanted the most effective cutting edge technologies, and Campbell-Ewald came up with the idea of utilizing text messages as part of such a technology?

A. That's correct.

* * *

[110]

* * *

Q. That was Campbell-Ewald's choosing how they wanted to staff the different campaigns.

A. Right.

Q. To go back to the March 2006 recommendations that you have in front of you, you had mentioned that this was the first time that you saw the Text Message Campaign proposal since it was suggested in December 2005, is that correct?

A. That's correct.

Q. Did you also testify that all of these proposals that were included in these recommendations were approved by the Navy?

A. Yes.

Q. Did the – did you or anyone that you were aware of at the Navy make any changes to the actual proposal set forth in the March recommendations?

A. No.

* * *

[112]

* * *

Q. Do you recall receiving this E-mail?

A. Yes, yes, I do.

Q. And this E-Mail was attaching a copy for the MindMatics wireless text blast, is that correct?

A. That's correct.

Q. Turn, please, to the next page, Bates number 366.

A. Okay.

Q. Do you recall if that was the attachment that was included in that E-Mail?

A. Yes, I do.

Q. And the first message says, MindMatics text blast (160 characters), correct?

A. That's correct.

Q. That was Campbell-Ewald's proposed copy for the 2006 text message?

A. Yes, it was.

Q. Was this E-Mail the first time you had seen the proposed copy for the 2006 message?

A. I believe it was.

Q. Are you aware of anyone at the Navy having [113] seen the proposed copy prior to this E-mail?

A. No, I'm not.

Q. Is it your understanding that it was Campbell-Ewald fully responsible for drafting the proposed copy prior to sending it to you?

A. Oh, yes, uh-huh.

Q. And then let's go up on the same page. There's another E-mail dated April 28, 2006. It says from lee.buchschacher@navy.mil to dgrayson.

Have you seen the E-mail before?

A. Yes.

Q. Is that your response to Ms. Grayson?

A. Yes, it is.

Q. And it says, Daidria, The text is approved provided we change the word "prove" to "do" in both text lines?

A. That's correct.

Q. And is it true that you wanted to change that word because you thought the word "prove" was more in line with the - - or the word "do" was more in line with the Marine message?

A. No. Prove was more in line with the Marine message. The Marines have something to prove. They're the ones that offer that.

* * *

[121]

* * *

Q. And the top of the page says MindMatics, do you see that?

A. Uh-huh.

Q. I'll read to you the second bullet point.

It says, MindMatics will deliver a Navy branded SMS (text) direct mobile marketing "push" program to

the cell phones of 150,000 adults 18 to 24 from an opt-in list of over 3 million. Do you see that?

A. Right.

Q. Was it your understanding when you reviewed this document that the text messages were going to be sent to 18 to 24 year olds?

A. Yes.

Q. Did you have an understanding that they would be sent to anyone other than 18 to 24 year olds?

A. No.

* * *

[122]

* * *

Q. So to go back to what we were talking about, intended recipients, the intended recipients were 18 to 24 year olds mostly, but not exclusively, male?

A. Yes.

Q. Was it your understanding that the text messages were only going to be sent to individuals who had provided consent previously to receive text messages sent from the Navy?

MS. REILLY: I'll object to the extent that that calls for a legal conclusion.

Q. (By Mr. Meyers) You can go ahead and answer.

A. It was our policy that any list procured by Campbell-Ewald had to be people that had opted in in some way to receive information about money for college, career opportunities, travel or adventure or some sale of the Navy.

Q. When you say it was our policy, was that a written policy?

A. It was a verbal policy that [123] Campbell-Ewald began to establish with us, and it was very critical because the list that we get for our general enlisted direct mail campaign is shared with our 26 different subordinate headquarters of Navy District Recruiting Commands, and they are able to send their own mailings out.

So if these people haven't opted in, then you know, we would be in trouble not only nationally but also locally. So it was our request that any list that they got would be opted in.

Q. And when you say list, would that include a list of text message recipients?

A. Yes.

Q. Was it your understanding at the time that Campbell-Ewald was aware of that policy?

A. Yes, because they were the – they were the pushers of the policy. They're the one that told us this is the standard we should maintain.

See, our local – there are 26 different local district recruiting offices. They can go out and buy lists, and we caution them not to because we don't know if they have been opted in.

Q. And, in fact, on Page 13 of that March 2006 recommendation, which is Gomez 082, in that [124] second bullet point, it states that the text will be delivered to 150,000 adults from an opt-in list of over 3 million?

A. Yes.

Q. And your understanding then was that all of the individuals who received it would have opted in to receiving those messages?

A. It was my understanding this was a kosher list.

Q. And the Navy was not -- Campbell-Ewald was not authorized that you know of to send text messages to individuals who had not opted in?

A. No, they were not.

Q. What's your understanding of the concept of consent, if you have one, for purposes of receiving a text message?

A. This would be someone -- let's say you sign up for an E-Mail. And upon creating your E-Mail account, it will ask you some personal information.

It will ask you what you're interested in, what's your likes or dislikes, and, you know, do you like gardening, do you like golf, and you check these things.

* * *

[131]

* * *

Q. Were there any conversations within the Navy about this 2006 text message going to individuals who had not previously consented?

A. Not that I'm aware of.

Q. Were there any conversations about individuals -- about the Navy becoming aware that this message was being sent to individuals who had not previously opted in?

A. Not that I'm aware.

Q. Mr. Buchschacher, do you expect that your contractors or -- excuse me the Navy's contractors will comply with all applicable laws and regulations?

A. Yeah, yes.

Q. Do you expect that Campbell-Ewald as your advertising company of record, that they will comply with all applicable laws and regulations?

A. Yes.

Q. Do you know if there is a provision in the Navy's contract with Campbell-Ewald that states that [132] Campbell-Ewald is obligated to comply at all times with applicable laws and regulations?

A. I don't know, but I suspect there is.

Q. Are you personally aware of the Navy ever authorizing advertisements that were in violation of Federal or State law?

A. No.

Q. Have you personally ever authorized an ad campaign that was in violation of Federal or State law that you can remember?

A. No.

Q. If you knew that an advertising campaign was in violation of a Federal of an applicable Federal or State statute, do you believe you would have authorized that?

A. I would not have.

Q. Are you familiar with the TCPA?

A. No, I'm not.

Q. I'll represent to you that the TCPA is the Telephone Communications Protection Act which is the statute that's relevant to this litigation.

Is it fair to say then you are not familiar with the TCPA as of May 2006?

A. I'm not familiar with it as it is today, [133] so ...

Q. If the TCPA was a Federal statute that relates to the transmission of text messages, would it have

been your expectation that Campbell-Ewald would have been familiar with it?

A. I would imagine their attorneys.

Q. Would it be your expectation that Campbell-Ewald again would comply with all statutes and regulations?

A. Yes.

MS. REILLY: Just to clarify for the record, it's Telephone Consumer Protection Act.

MR. MEYERS: What did I say?

MS. WYTSMA: Telephone Communications.

MR. MEYERS: That's embarrassing.

Q. (By Mr. Meyers)That doesn't change your answers at all, does it?

A. No.

* * *

[159]

Q. ..., how frequent was your contact with representatives of Campbell-Ewald.

A. Oh, very frequent.

Q. On a weekly basis?

A. Daily.

Q. Daily. And what type of communications would you have on a daily basis with Campbell-Ewald?

A. Usually I would get a phone call that goes, Hi, this is Rachel and Laura, and we're going to have a conference – oh, we have a conference, oh, how about that, I didn't know that.

And so, you know, they'd either want approval or they'd want to discuss something. Whenever I talked with members of the sales people organizations that

visited us, wanted us to sell stuff to Campbell-Ewald, I would call up Dan Rioux and discuss with him and say, hey, I just talked to somebody from Sports Illustrated, they stopped by, they wanted to say hi, they're planning a big thing in the spring and want us to be a part of it, I'll send it to you for consideration.

But, yeah, we were in constant contact with Campbell-Ewald on a daily basis.

Q. In Paragraph 5 of your Declaration, you [160] indicate that each campaign requires Naval Recruiting Command approval, oversight and review.

Can you describe what you mean by that?

A. Paragraph 5?

Q. The second sentence of Paragraph 5.

MS. REILLY: Line 12.

A. What do I mean by the campaign requires NRC approval of – Campbell-Ewald doesn't do anything without the approval of the United States Navy Recruiting Command or somebody in it.

Now, the problem is you don't know who the client is on any given day. One day it might be Cornell Galloway. Another day it may be Lee Buchschacher. Another day it may be Captain Buterbaugh, it may be Admiral Kilkenny, it may be someone else higher up.

Q. In terms of individuals at the Navy Recruiting Command that had contact with Campbell-Ewald concerning its advertising efforts on behalf of the Navy, are you able to approximate the number of individuals that would have some contact with Campbell-Ewald on a regular basis?

A. Yes.

Q. Approximately how many?

[161] A. Five program advertising managers, myself, the Deputy Director, John Byrd, the captain, our commander in charge of – you know, also the division chief and the other division chief from local marketing.

John Hamilton, our consultant that's – yeah, Edna who contacts them on contracting issues. So you have something between twelve and fifteen people contacting Campbell-Ewald on a daily basis.

Q. I'd like to talk a little bit about Exhibit 2 to your Declaration, and this is a document that I think was earlier described as a media plan; is that a correct characterization?

A. Communications plan?

Q. Okay.

A. Yes.

Q. Is there a difference between a communications plan and a media plan?

A. Well, could – a communications plan that might not have any media, you know. But generally when we talk about communications, we're talk – advertising, we're talking about the paid media that you're going to use and the timing of it and the messaging of it.

[162] Q. I'd like to direct your attention to – well, first, let me ask you a broader question.

Earlier counsel asked you whether this was a document that was intended to educate the Navy concerning potential media opportunities.

Was there – in your understanding was there any other purpose for presenting this communications plan to the United States Navy?

A. Again, in their annual plan, they do a lot of education. In their subsequent plans that they

delivered, they also include some education. Sometimes it's kind of talking down to you.

We understand, you know, but it's all part of training their account executives. They want to impart to the client, make sure they understand how it's going to be used, what is going to be used and so forth.

Q. Do you have any knowledge as to whether a communications plan must be approved by the United States Navy?

A. Yes, the strategic plan must be approved before we can move forward. That's a requirement by FISC.

24 Q. And I'd like to direct your attention [163] specifically to Page 15 of Exhibit 2. The caption of the slide is Exploratory Media.

A. Uh-huh.

Q. What was your understanding with respect to the first bullet under Exploratory Media?

A. Wireless/Mobile Marketing, and it would appear to be launched sometime in February to July time frame.

It expands and built upon, if you will, our direct response effort, using those different text messaging systems, the two basic ones.

Q. Okay. And what was your understanding of SMS at the time you received this document?

A. I didn't know what it means. I still can't remember. It's in the briefing later on what it stands for.

Q. Did you have an understanding that this mobile marketing was directed to text messages?

A. Yes. As soon as I see that, I know it's on telephones, but I just don't know – I don't remember

all these wireless application protocol and what all that means.

Q. But you had an understanding that Campbell-Ewald was proposing a text messaging [164] campaign?

A. Of course.

Q. And do you have any knowledge as to who reviewed this particular communications plan in December of 2005?

A. I would imagine we all did.

Q. And by all, who do you mean?

A. I mean the Captain Buterbaugh, everybody, you know, everyone I mentioned, the twelve to fifteen people I mentioned earlier.

Q. And do you have any knowledge as to whether it was reviewed by the Fleet Industrial Supply Center?

A. I believe so, but I'm not sure.

Q. I would like to turn your attention to Page 3 of your Declaration, Line 5.

A. Yes.

Q. Does that refresh your recollection as to whether the communications plan in December 2005 was reviewed by Fleet Industrial Supply Center?

A. Yes, I believe that's – that's my understanding.

Q. Did you approve of the communications plan presented by Campbell-Ewald in December 2005?

[165] A. Generally. I may have had some – every year I have comments that will go into a dark hole. I don't know whatever happens to them, but I do have comments every year.

Q. And after providing comments, do you approve of the communications plan on behalf of the NRC?

A. No, I didn't approve the communications plan on behalf of the NRC. The Admiral does that. But, you know, I made my points whatever they might have been, and I was never at -- I was never opposed to the use of texting because I knew it was the wave of the future.

Q. You said the Admiral did that. What do you mean by the Admiral did that?

A. Well, we -- again, it depends who's in charge of this week. I have been there where the only one that really approved it was the Director of Advertising. The Admiral didn't want to be involved.

I have been there where last Admiral, Admiral Faller went line for line for line for line and, in fact, wanted to be involved in the writing of it with Campbell-Ewald. So it just depends who's

* * *

[167]

* * *

Q. And, sir, you testified earlier that you had an opportunity to review this Power Point Presentation in March of 2006, correct?

A. Yes.

Q. Do you have any knowledge as to whether the United States Navy approved the recommendations that were contained in this Power Point Presentation?

A. Yes.

Q. And do you know who on behalf of the United States Navy approved the recommendations?

A. Well, again, using the text message as a resource, was approved in the larger plan, and then we

approved – or marketing and advertising approved the specific plan.

* * *

[169]

* * *

Q. ... Based on the presentation that Campbell-Ewald provided in March of 2006, which is Exhibit 3 to your Declaration in front of you, did you have an understanding whether Campbell-Ewald intended to use any subcontractors to assist it in actually executing a text message –

A. Of course, yes.

Q. And did you have an understanding that that subcontractor was MindMatics based on the presentation made to you in March of 2006?

A. It was not top of mind, but, yes, okay.

Q. It was information that was disclosed to the United States Navy?

A. Yes.

Q. And the United States Navy had no objection to using a subcontractor to assist in excusing its Text Message Campaign?

A. Yes, just like we have no objection if we want to advertise on CBS that CBS launch the commercial for us which they have to on their [170] network.

Q. Do you have any knowledge whether the base contracts between Campbell-Ewald and the United States Navy contemplated the use of third party contractors?

A. Oh, I'm sure. It requires it.

Q. Why does it require it?

A. Well, first of all, they inherited a couple of those contractors. One in specifically was our Fulfillment Center at the time and their Call Center. They had to take over from BBDO. So under CLIN 1 of the contract, they have to fund those activities.

So, yes, we're familiar that advertising agencies do not do all of the work, that they farm it out to experts in the various fields.

Q. And I believe you testified earlier today that you had an opportunity to review the copy for the text message that was sent in May of 2005, is that correct?

A. Yes.

Q. All right. And did you, in fact, make any changes to that copy?

A. This is when – we made the change because [171] it sounded too Marine copy, yes, I did make a change then.

Q. And did you provide your changes to Campbell-Ewald.

Q. And did you provide your changes to Campbell-Ewald?

A. Yes, I did, through their account executive.

Q. Do you know whether Campbell-Ewald made that change?

A. I assume they did.

Q. And did you approve the copy that was ultimately sent on behalf of the United States Navy in May of 2005?

A. Yes.

Q. I'm sorry. Counsel just reminded me let me rephrase that question. I got my date wrong.

Did you ultimately approve the copy that was used in the text message that was sent in May of 2006?

A. Yes.

Q. And you approved of the Text Message Campaign generally, is that correct?

A. That is correct.

* * *

[179] you had indicated that you spoke with someone from Campbell-Ewald almost daily, is that fair?

A. Almost daily, yes, even if it was just a secretary telling me they're in a meeting still.

Q. That's what I want to ask. Are some of those daily conversations what I would call non-substantive conversations, or were they about being in a meeting or scheduling a call?

A. Yeah, some of them are real short conversations like can you send me a copy of umpty, umpty, umpty ump or something like that.

Q. Is it fair to say that you did not contact Campbell-Ewald on a daily basis with you initiating the

A. Yes, it is fair to say I initiated many of the calls. They also initiated calls to me.

Q. Did you initiate calls to instruct them on how to run any campaigns on a daily basis?

A. I would call them and say do you have any money left over that maybe we could do something for spring break this year or, you know – so, yes, we did call and ask if there were things we could include in the plan, get included in the plan.

Q. Broad plans that you thought maybe could

* * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals,	)	No. CV 10-2007-DMG (CW)
Plaintiff,	)	CONFIDENTIAL FOR ATTORNEYS' EYES ONLY
vs.	)	
CAMPBELL-EWALD COMPANY, a Delaware corporation,	)	
Defendant.	)	

*** CONFIDENTIAL – ATTORNEYS' EYES ONLY ***

DEPOSITION OF:

DANIEL RIOUX
Friday, January 13, 2012
9:09 a.m.

* * *

[57]

* * *

Q How does that objective differ than support recruiting efforts?

A Supporting recruiting efforts might be far more specific than a branding effort.

Q Do you know what that term meant with respect to this contract?

A I have a pretty good idea of what that meant.

Q What is that idea?

A Beyond building brand awareness, actually generating leads for Navy Recruiting Command to work and, eventually, hopefully, convert the contracts.

Q But there's a distinction between creating brand awareness and actually generating leads?

A Yes.

Q And is there a distinction between increasing share of voice and generating leads?

A Yes. Lead generation doesn't necessarily require an increased share of voice to be more effective than brand advertising, but increasing share of voice is going to be measurable in advertising that's visible to a broader general public.

Q Okay, so Campbell-Ewald had multiple objectives, only one of which, amongst many, was specifically to support recruiting efforts; is that correct?

[58] A Well, no, that's not exactly right, because all of these efforts ultimately aid Navy Recruiting Command in their effort to recruit.

Q What's your understanding what the word "recruit" means?

A When I'm using the phrase "recruit," I mean for a Navy recruit to actually sign up a sailor for active duty service or reserve service.

Q So recruiting is when the Navy, for lack of a better term - I'm not a military guy - actually signs up someone to --

A That's right, sign up.

Q -- to go into or to enlist in the Navy.

A That's right.

Q And Campbell-Ewald is not involved in the actual signing up of the individual to join the Navy, correct?

A That's right.

Q And Campbell-Ewald is not actually involved in deciding whether someone satisfies the Navy's criteria and should go forward with the recruiting process, correct?

A Correct.

Q Campbell-Ewald doesn't staff any recruiting offices?

A That's right, we don't.

* * *

[63]

* * *

(Record read.)

MS. WYTSMA: Objection, it calls for speculation.

The witness can answer as to his personal knowledge.

THE WITNESS: I'm not aware of any such campaigns.

BY MR. MEYERS:

Q To be clear, you're not aware, at this point, of Campbell-Ewald ever undertaking a campaign or performing any task for the Navy that Campbell-

Ewald knew to be in violation of federal or state law or regulation?

A No, I'm not aware of any such campaign.

Q Are you aware of the Navy ever authorizing Campbell-Ewald to do anything that was in violation of federal or state law or regulation?

A No, I'm not aware.

Q Based on your experience working with the Navy over the last decade or so, do you have any reason to believe that the Navy would ever authorize any campaign or task related to a campaign that was in violation of federal law?

A No.

* * *

[112]

* * *

A Well, sure. We wouldn't want people to receive an unwanted message in their inbox and risk creating ill will toward the Navy. So that was important for us, yes.

Q MindMatics clearly references an RFP response as opted-in information.

Prior to receiving that response, did you specifically ask MindMatics to mention opt-in information in their RFP response?

(Interruption in proceedings.)

THE WITNESS: I'm sorry, can you repeat that.

BY MR. MEYERS:

Q I'll just ask it again.

Prior to receiving this RFP response from MindMatics in February of '06, did you ask MindMatics

to include in their response information about the opt-in list of how the recipients were opted in?

A I don't think that was specifically called out in the RFP, since it was requesting more general responses to mobile click-to-call tactics. And I'd have to review the RFP here before I can answer that with any certainty.

Q Okay. I'll ask this question.

* * *

[119]

* * *

Q And in those conversations, Mr. Greene explained that the list was generated from individuals essentially asking for a free ringtone or a mobile application of some sort?

A That's right. Ringtones, wallpapers, twitch games, things of that nature.

Q Did you ever ask Mr. Greene, or anyone at MindMatics, whether there was any – whether any of the individuals on that list had specifically requested to receive information about money for college, career opportunities, or travel or adventure?

A No. I don't think that was part of our conversation.

Q And he never indicated that – any of those categories of information as part of the list?

A My recollection is what MindMatics had offered in terms of list select was limited to the demographic information that we discussed earlier: Age, gender. Sometimes they would get an e-mail or e-mail address as well as a cell phone number.

Q So your communications with MindMatics about the [120] opt-in list related mostly to age and gender?

A Yes, the demographic specifics.

Q And did you do anything – what steps did you take to verify that the individuals who had received this text message sent in 2006 were between the ages of 18 and 24?

A I asked Jordan Greene to produce a revised proposal based on the recommendation we carried forward to Navy, eliminating the other mobile tactics that were included in their original response to our RFP, and to refine that to the specifics of the SMS text message media buy, and in response to that request, the response states that they will deliver these messages to people in that age group.

Q But other than relying on MindMatics' representations that they would deliver the texts to people in that age group, is there anything else that you or anyone at Campbell-Ewald did to actually verify how they would be able to do that?

A No.

Q You essentially took them at their word that they would deliver it to 18- to 24-year-olds; is that correct?

A Yes. We believed they would do what they said they would do.

[121] Q Was there any discussion of – well, strike that.

Why did you include the opt-in information in the March 2006 recommendations to the Navy? Why did you feel that that was something that needed to go into the recommendations?

A Again, it was something that MindMatics had offered up as a selling point for why they could be trusted and why this list would be suitable for use for the Navy. That, I guess, is my simplest answer.

MS. WYTSMA: Could we go off the record for one second?

MR. MEYERS: Sure. Off the record.

(Recess taken.)

(Record read.)

(Plaintiff Exhibit 39 was marked for identification by the reporter.)

BY MR. MEYERS:

Q We're back on the record.

Mr. Rioux, I'm handing you what's been marked as Exhibit 39. Take a moment to look at that, please.

And while you keep reviewing, for the record, this is an e-mail dated Monday, May 15, 2006 from – well, we'll leave it at that.

Have you seen this document before?

* * *

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Attorneys for Defendant
Campbell-Ewald Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals, Plaintiff, v. CAMPBELL-EWALD COMPANY, a Delaware corporation, Defendant.	Case No. CV 10-2007-DMG (CWx) Assigned to Hon. Dolly M. Gee **DEFENDANT CAMPBELL-EWALD COMPANY'S OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, defendant Campbell-Ewald Company

("C-E") objects and responds to plaintiff Jose Gomez's First Set of Requests for Admissions ("Requests") as follows:

* * *

REQUEST FOR ADMISSION NO. 57:

Request:

The written contract between Campbell-Ewald and the Navy, executed in or about 2005 and relating to the provision of advertising services for Navy recruitment, does not state that Campbell-Ewald is an agent of the Navy.

Response:

C-E objects that "states" is vague and ambiguous. C-E also objects that the document speaks for itself.

Subject to the foregoing objections, including but not limited to the general objections, C-E admits that contract between C-E and the Navy executed in 2005 does not explicitly state that Campbell-Ewald is an "agent" of the Navy.

REQUEST FOR ADMISSION NO. 58:

Request:

The written contract between Campbell-Ewald and the Navy, executed in or about 2005 and relating to the provision of advertising services for Navy recruitment, does not state that Campbell-Ewald is an agent of the federal government.

Response:

C-E objects that "states" is vague and ambiguous. C-E also objects that the document speaks for itself.

Subject to the foregoing objections, including but not limited to the general objections, C-E admits that contract between C-E and the Navy executed in 2005

docs not explicitly state that Campbell-Ewald is an "agent" of the federal government.

* * *

REQUEST FOR ADMISSION NO. 72:

Request:

Prior to the transmission of the Navy text messages to Gomez and the Class, Campbell-Ewald did not ask Mindmatics for any documents reflecting the prior express consent of any person to receive text messages from Mindmatics.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence. C-E also objects to this Request as outside the scope of the Court's November 16, 2011 order permitting "targeted ... requests for admission for the purpose of identifying the scope of the relationship between Defendant C-E and the U.S. Navy, as well as the authorizations given for, and communications regarding, the 2005 [sic] text message campaign."

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

REQUEST FOR ADMISSION NO. 73:

Request:

Prior to the transmission of the Navy text messages to Gomez and the Class, Campbell-Ewald did not ask Mindmatics for any documents reflecting the prior express consent of any person to receive text messages from Campbell-Ewald.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence. C-E also objects to this Request as outside the scope of the Court's November 16, 2011 order permitting "targeted ... requests for admission for the purpose of identifying the scope of the relationship between Defendant C-E and the U.S. Navy, as well as the authorizations given for, and communications regarding, the 2005 [sic] text message campaign."

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

REQUEST FOR ADMISSION NO. 74:

Request:

Prior to the transmission of the Navy text messages to Gomez and the Class, Campbell-Ewald did not receive any documents from Mindmatics reflecting the prior express consent of Plaintiff Gomez to receive text messages from Mindmatics.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence. C-E also objects to this Request as outside the scope of the Court's November 16, 2011 order permitting "targeted ... requests for admission for the purpose of identifying the scope of the relationship between Defendant C-E and the U.S. Navy, as well as the authorizations given for, and communications regarding, the 2005 [sic] text message campaign."

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

REQUEST FOR ADMISSION NO. 75:

Request:

Prior to the transmission of the Navy text messages to Gomez and the Class, Campbell-Ewald did not receive any documents from Mindmatics reflecting the prior express consent of Plaintiff Gomez to receive text messages from Campbell-Ewald.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence. C-E also objects to this Request as outside the scope of the Court's November 16, 2011 order permitting "targeted ... requests for admission for the purpose of identifying the scope of the relationship between Defendant C-E and the U.S. Navy, as well as the authorizations given for, and communications regarding, the 2005 [sic] text message campaign."

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

REQUEST FOR ADMISSION NO. 76:

Request:

Prior to the transmission of the Navy text messages to Gomez and the Class, Campbell-Ewald did not receive any documents from Mindmatics reflecting the prior express consent of any person to receive text messages from Mindmatics.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence. C-E also objects to this Request as outside the scope of the Court's November 16, 2011 order permitting "targeted ... requests for admission for the purpose of identifying the scope of the relationship between Defendant C-E and the U.S. Navy, as well as the authorizations given for, and communications regarding, the 2005 [sic] text message campaign."

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

REQUEST FOR ADMISSION NO. 77:

Request:

Prior to the transmission of the Navy text messages to Gomez and the Class, Campbell-Ewald did not receive any documents from Mindmatics reflecting the prior express consent of any person to receive text messages from Campbell-Ewald.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence. C-E also objects to this Request as outside the scope of the Court's November 16, 2011 order permitting "targeted ... requests for admission for the purpose of identifying the scope of the relationship between Defendant C-E and the U.S. Navy, as well as the authorizations given for, and communications regarding, the 2005 [sic] text message campaign."

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

* * *

REQUEST FOR ADMISSION NO. 81:

Request:

The 2006 Navy text message campaign approved by the Navy called for text messages to be sent only to persons between and including the ages of 18 and 24 years old.

Response:

C-E objects that this Request is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Admitted.

* * *

REQUEST FOR ADMISSION NO. 85:

Request:

Campbell-Ewald drafted the copy for the 2006 Navy text message.

Response:

C-E admits that C-E drafted the copy for the 2006 Navy text message with input from the Navy.

REQUEST FOR ADMISSION NO. 86:

Request:

The 2006 Navy text message copy was written by Campbell-Ewald employees.

Response:

C-E admits that the 2006 Navy text message copy was written by C-E with input from the Navy.

* * *

REQUEST FOR ADMISSION NO. 93:

Request:

The Navy only changed one word to the copy for the 2006 Navy text message.

Response:

Admitted.

* * *

REQUEST FOR ADMISSION NO. 95:

Request:

Pursuant to the contract governing the relationship between Campbell-Ewald and the Navy as of May 2006, Campbell-Ewald was obligated to comply with all applicable federal statutes and regulations.

Response:

Defendant objects to this Request as overly broad and ambiguous as to "the contract." Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

Denied. However, C-E admits that as a general proposition it was obligated to comply with federal law.

REQUEST FOR ADMISSION NO. 96:

Request:

Federal contract number N00600-00-D-6048 required Campbell-Ewald to comply with all applicable federal statutes and regulations.

Response:

C-E objects to this request as duplicative of Request No. 55. C-E also objects that the document speaks for itself.

Subject to the foregoing objections, including but not limited to the general objections, C-E admits that Contract No. N00600-00-D-6048 required C-E to "comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under [the] contract."

REQUEST FOR ADMISSION NO. 97:

Request:

Other than the one-word revision made by Lee Buchschacher on April 28, 2006, the Navy did not participate in the drafting of the copy for the 2006 Navy text message.

Response:

C-E objects to "participate in the drafting" as vague and ambiguous. C-E also objects to this Request on the basis that Plaintiff intentionally delayed filing suit against C-E and as a result of the delay, C-E is prejudiced in its ability to respond to this Request. Subject to the foregoing objections, including but not limited to the general objections, C-E responds as follows:

After a reasonable inquiry, C-E lacks sufficient knowledge or information to form a belief as to the truth or falsity of the request and on that basis denies it.

REQUEST FOR ADMISSION NO. 98:

Request:

The Navy never communicated to Campbell-Ewald any interest or desire for the 2006 Navy text message campaign to violate any federal statutes or regulations.

Response:

Admitted.

REQUEST FOR ADMISSION NO. 99:

Request:

As of May 2006, Campbell-Ewald was not aware of any intent or desire of the Navy to have the TCPA violated in effectuating the 2006 Navy text message campaign.

Response:

Admitted.

REQUEST FOR ADMISSION NO. 100:

Request:

As of May 2006, Campbell-Ewald was not aware of any intent or desire by the Navy to not have Campbell-Ewald comply with all relevant federal statutes and regulations with respect to the 2006 Navy text message campaign.

Response:

Admitted.

* * *

MIME-Version:	1.0
Content-Type:	multipart/related; boundary="---=_NextPart_01CBDE2E.EBFA1C5O"
Content-Location:	file:///C:/6318C6B6/0000007_0000046.htm
Content-Transfer-Encoding:	quoted-printable
Content-Type:	text/html; charset="us-ascii"
Attachment	Attachment Attachment Attachment Attachment

From: lee.buchschacher@navy.mil
Sent: Friday, April 28, 2006 12:20 PM
To: dgrayson@campbell-ewald.com
Cc: cornell.galloway@navy.mil; jgaulzet@campbell-ewald.com; kgebby@campbell-ewald.com
Subject: FW: Approval – MindMatics & go2 Wireless Initiatives
Attachments: wireless_mindmatics-go2copyFINAL.doc

Daidria,
The text is approved provided we change the word "prove" to "do" in both text lines.
Lee Buchschacher
Director.
Marketing and Advertising Plans Division
901-874-9419

- - - Original Message - - -

From: Grayson, Daidria [mailto:dgrayson@campbell-ewald.com]

Sent: Thursday, April 27, 2006 10:29

To: Buchschacher, Lee A CIV CNRC MILLINGTON, TN, N9

Cc: Galloway, Cornell CIV CNRC MILLINGTON, TN, N9, Gaulzetti, Joseph; Gebby, Kelly

Subject: Approval – MindMatics & go2 Wireless Initiatives

Good morning Lee,

I hope all is well. Attached please find copy for our wireless text blasts with MindMatics and the cellular landing page with go2. For MindMatics, an outbound text blast is sent directly to consumers' phones containing the provided copy with a click-to-call number sending the caller directly to the call center to receive more information. For Go2, the caller will click on our logo or the call-to-action "GET YOUR FREE VIDEO" placed underneath, which will lead to a jump page containg the attached copy. The number in the copy is also click-to-call, directing the caller to the call-center. Once the copy is approved, MindMatics and go2 will provide screen shots of the text within the phone frame for final approval, which will be sent to you or Cornell (depending on when it is received) for final approval.

*FYI We have copy from one more wireless vendor that will be forwarded for your approval by tomorrow at the latest.

Please do not hesitate to contact me with any questions and/or concerns. Thank you and have a wonderful day!

–

Daidria R. Grayson
Assistant Account Executive – Navy
30400 Van Dyke
Warren, MI 48093-2316
Phone: (586) 558-6340
Fax: (586) 558-6584
dgrayson@campbell-ewald.com

Wireless-Mindmatics/go2
E6-NV-Q-0225

Mindmatics text blast (160 characters)

Destined for something big? Prove it in the Navy. Get a career. An education.
And a chance to serve a greater cause. For a FREE Navy video, call [redacted].

Go2 landing text (6 lines- max 32 characters per line)

Destined for something great?
You can prove it in the Navy.
Do your part in a bigger cause.
Get a career and an education.
For your FREE Navy video,
call [redacted].

MIME-Version:	1.0
Content-Type:	multipart/related; boundary="—=_NextPart_01CBDE2F.11E57270"
Content-Location:	file:///C:/6318CA36/0000007_0000106.hlm
Content-Transfer-Encoding:	quoted-printable
Content-Type:	text/html; charset="us-ascii"
Attachment	Attachment Attachment Attachment

From: cwoolums@campbell-ewald.com
Sent: Friday, April 28, 2006 1:59 PM
To: dgrayson@campbell-ewald.com
Cc: rallston@campbell-ewald.com
Subject: Re: go2/Mindmatics – Client Approval

Per our discussion, I'm OK with it.
Thanks and have a nice weekend.
cw

From: "Grayson, Daidria" <dgrayson@campbell-ewald.com>
Date: Fri, 28 Apr 2006 16:40:39-0400
To: "Woolums, Chad" <cwoolums@campbell-ewald.com>
Cc: "Hodges, Mandy" <mhodges@campbell-ewald.com>, "Gebby, Kelly" <kgebby@campbell-

ewald.com>, "Gaulzetti, Joseph" <jgaulzet@campbell-ewald.com>
Conversation: go2/Mindmatics - Client Approval
Subject: go2/Mindmatics - Client Approval

Hi Chad!

The copy for the go2 and Mindmatics wireless campaigns are approved by Lee with one change: changing "prove" in both pieces of copy to "do." The word "prove" appears to align moreso with the Marines and may give the idea that in the Navy, you have to "prove" yourself, manhood, ambition, leadership skills. etc. If you agree with the change, please reply in confirmation and I will proceed with sending the approved copy to MindMatics and go2.
Have a great weekend!

–

Daidria R. Grayson
Assistant Account Executive – Navy
30400 Van Dyke
Warren, MI 48093-2316
Phone: (586) 558-6340
Fax: (586) 558-6584
dgrayson@campbell-ewald.com

Wireless-Mindmatics/go2
E6-NV-Q-0225

Mindmatics text blast (157 characters)

Destined for something big? Do it in the Navy. Get a career. An education. And a chance to serve a greater cause. For a FREE Navy video, call [redacted].

Go2 landing text (6 lines – max 32 characters per line)

Destined for something great?
You can do it in the Navy.
Do your part in a bigger cause.
Get a career and an education.
For your FREE Navy video,
call [redacted].

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS *OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30*			1 REQUISITION NUMBER N6671505RCS3063	PAGE 1 OF 47
2 CONTRACT NO. N00140-06-D-0005	3 AWARD/ EFFECTIVE DATE 20-Nov-2006	4 ORDER NUMBER	5 SOLICITATION NUMBER N00140-05-R-0038	6 SOLICITATION ISSUE DATE 10-Jun-2005
7 FOR SOLICITATION INFORMATION CALL	a NAME FRANK MORETTI		b TELEPHONE NUMBER (No Collect Calls) 215-697-9611	8 OFFER DUE DATE/LOCAL TIME 08-Jul-2005 16:00

9 ISSUED BY CODE N00140 FISC NORFOLK CONTRACTING DEPARTMENT PHILADELPHIA OFFICE 700 ROBBINS AVENUE, BUILDING 2B PHILADELPHIA PA 19111-6083 TEL: 215-697-9550 FAX: 215-697-9554	10 THIS ACQUISITION IS _X_ UNRESTRICTED * * *	11 DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED * * *	12 DISCOUNT TERMS
		_X_ 13a THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	
		13b RATING D0-S10	
		14 METHOD OF SOLICITATION ___ RFQ __ IFB _X_ RFP	

15 DELIVER TO CODE ___	16 ADMINISTERED BY CODE _S2305A_
SEE SCHEDULE	DCM DETROIT US ARMY TANK AND AUTOMOTIVE CMD (TACOM) WARREN MI 48397-5000
17 a CONTRACTOR/ CODE 1P2G8 FACILITY CODE ___ OFFEROR CAMPBELL EWALD COMPANY JIM PALMER DBA CAMPBELL EWALD ADVERTISING 30400 VAN DYKE AVENUE WARREN MI 48093-2316 TEL 5860558-7209	* * *

* * *

_ 27a SOLICITATION INCORPORATES BY REFERENCE FAR 52 212-1 52212-4 FAR 52212-3 AND 52 212-5 ARE ATTACHED X 27b CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52 212-4 FAR 52212-5 IS ATTACHED	ADDENDA _ ARE _ ARE NOT ATTACHED ADDENDA X ARE _ ARE NOT ATTACHED

* * *

CLAUSES INCORPORATED BY FULL TEXT

CLIN Definitions.

1. CLINs 0001/0004/0007/001/0013 – Advertising Services

Offerors shall propose a monthly unit price to perform Advertising Services in accordance with the Statement of Work. The amount entered under CLIN 0001 and corresponding option year CLINs will be multiplied by 12 months to arrive at the total for CLIN 0001 and the corresponding option year CLINs. Offerors shall also propose a monthly unit price for the four following option years to perform services in those periods. The offeror should take inflation and other price-related factors into consideration when proposing prices for the option years. During the NRSP Conference held in June of each year, the contractor and the Government will agree on the NRSP for the upcoming contract period, and the written NRSP will be incorporated into the contract. During the conference, there may be adjustments in the option year's NRSP, but there will be no adjustment in the option year's price.

The offeror shall propose a firm fixed-price monthly unit price to perform all services related to the applicable year's recruiting efforts. The price includes, but is not limited to labor (prime and subcontractor), indirect costs (overhead, G&A, fringe, etc.), other direct expenses (travel, material telephone charges, paper reproduction, etc.), and the facilitation of the yearly annual NRSP Conference, including the price for the facility. Therefore, offerors are encouraged to manage their costs with the understanding that their monthly unit price is the only payment that will be made to cover all the costs and profit to administer the

contract during a given performance period (with the exception of Space Charges and Media Placement).

2. CLINs 0002/0005/0008/0011/0014 Space Charges and Media Placement

These CLINs will support "pass through" costs of space charges and media placement costs for various media to include, but not limited to, television, radio, internet, periodical, print, and outdoor buys. The not-to-exceed estimated ceiling amount may or may not be fully funded, depending upon budgetary determinations from higher authority. The contractor shall use its best efforts to obtain the lowest commercial rate available for media placement. The offeror will pass on any applicable rebates and/or discounts to the Government (Media placement cost-rebate/discount = media price). All media discounts and merchandising credits shall accrue to the Government. Labor or any associated costs for space charges and media placement shall be proposed under the CLINs for Advertising Services. 0001/0004/0007/0010/0013.

3. CLINs 0003/0006/0009/0012/0015 – Additional Advertising Services

The offerors shall provide a fully burdened blended hourly rate (not including ODC's) for each of the six (6) organizational segments for these CLINs. The fixed price blended hourly rates proposed by the offeror for the six (6) organizational segments below will be used to place task orders for services that fall outside the scope of the strategic plan, but remain within the total scope of the contract.

(1) Research, Strategic Plan, Program Development and Assessment

(2) Creative Strategy, Execution, and Production

(3) Media and Related Services

(4) Prospect Relationship Management & Fulfillment Operations

(5) Events Marketing

(6) Account Management and Team Execution

Note: These CLINs will be awarded on a task order basis. if and when the Government has a requirement that is not covered by the strategic plan, but is within the scope of the Statement of Work. There is no guarantee that this CLIN will be utilized. However, if it is, the contractor will receive a statement of work from the PCO office to propose on. The offeror will propose the number of hours, the labor segment Mix (from the six segments above) and ODC's. After negotiation of the hours and ODC's, a firm fixed-price task order will be put in place based on the pre-determined hourly rates proposed for the contract.

STATEMENT OF WORK

C.1 OVERVIEW

The purpose of the Navy Recruiting Advertising program is to:

1. Increase awareness of and favorable attitudes of the Navy and Navy Reserve as a career choice by specific diverse target audiences.
2. Generate eligible, quality leads and prospect relationships for recruiter follow-up.
3. Aim of communications is to drive prospects to www.navy.com, www.elnavy.com or www.navyreserve.com and generate traffic into local Navy recruiting stations.

4. The Navy websites are used to increase familiarity of Navy's career opportunities and benefits, assist diverse young adults in the decision making process, prepare prospects for direct contact with a recruiter by easing fear/raising their knowledge of the Navy, and generate leads.
5. Use internet, interactive marketing, and other forms of electronic marketing to position Navy as a modern high technology service and appeal to diverse prospects in cutting edge forms they demand.

All advertising and prospect engagement activities are to be carried out at the best value to the Government consistent with standards necessary to meet recruiting objectives. Based on historical data, the Navy expects its annual contract budget to range from [redacted] Within this budget is included all advertising services including, but not limited to, media planning and buying, creative development, account planning management, call center, web site management, leads management, and fulfillment center operations performed by the contractor or its subcontractors. Items not included are most printing, which is done separately by the government and procurement of fulfillment and promotional items. Budget figures provided here are for planning purposes only – Congress and Department of the Navy (DON) will decide exact budget amounts. Changes in the allocated advertising budget will impact the advertising and marketing plan and the programs that are executed. Changes in the Navy's recruiting goals may have similar effects on plans and programs. Budget and goal changes can occur at anytime,

including the execution year – the contractor must be flexible enough to handle these changes and the subsequent impact on the communications program. Accordingly, Contract Line Item Numbers (CLINs) 0002/0005/0008/0011/0014 and 0003/0006/0009/0012/0015 are ceiling-priced and there is no guarantee the Government will order the maximum amount identified in the Schedule of Supplies/Services and Prices for those CLINs.

The principal target audiences in the Navy communications program are determined by recruiting goals and the communications strategy and include prospects of diverse demographics from all areas of the country. Targets may include (approximate age groups included):

1. High school students (juniors and seniors) and recent graduates, ages 17–24.
2. College students (two-year and four-year) and recent graduates under the age of 26.
3. Members of the workforce under the age of 34 for active duty or 37 for reserve duty.
4. Professionals such as doctors, dentists, nurse specialists, engineers, lawyers, etc. (including those in school and in the workforce) that are under the age of 40.
5. Members of the general public who may influence the attitudes and decisions of the above primary prospects such as parents, other family members,. high school counselors, etc.
6. Pre-17 year aids.
7. Veterans (prior active and/or reserve service).

The Navy's recruiting advertising program is directed toward the recruitment of personnel to fill vacancies in

enlisted and officer programs for both the active and reserve components. The numbers and quality of personnel required for each of these Navy's programs can vary in response to factors like the world situation, past shortfalls in recruiting, the internal Navy recruitment rate, and personnel ceiling established by Congress. Enlisted and officer goals for Fiscal Year 2005 (FY05) are listed in Attachment J-1, as well as those anticipated for FY06 (1 Oct 05 – 30 Sep06). Actual goals for FY06 may vary significantly from those shown and will not be known until Summer 2005. Navy endeavors to attract qualified prospects to fill its requirements from all walks of life, all areas of the country and diversity representative of the nation itself.

The advertising contractor, hereafter referred to as the contractor, in coordination with the Navy, shall create a Strategic Communications Plan (Strategic Plan) for Navy approval, outlining strategic level communications plan including marketing goals for the following 3 years (at a minimum). Annually, the contractor must develop a one-year Advertising and Marketing Plan (Annual Plan) for the next FY for approval by senior level Navy management that achieves the strategic goals for that year, meets Navy's recruiting goals set for that FY, and any special goals or needs the Navy may specify.

During the execution year, the Navy has projects of all types in preparation and/or operation. These projects can range from creation and production of a single print advertisement to planning and executing an on-line communications campaign. It is essential that the contractor's procedures, including its subcontractors,

enable the routine and timely production of all materials and their storage and preservation.

C.2 SCOPE

The contractor, shall be a Full-Service Advertising Agency (defined as an advertising firm that can perform the major functions classified as creative services; account services; marketing services, including media and internet services, marketing research, and promotion; direct response services; and finance and management) capable of executing at least the following advertising and advertising-related activities either through use of in-house personnel or subcontracted personnel.

1. Primary and secondary market research, including target audience identification market segmentation, and analysis.
2. Comprehensive account planning and strategy plan development.
3. Creative design, development, and production of all media (including, but not necessarily limited to TV, radio, print including magazine and newspaper, on-line advertising, web site and other interactive activities, video, and other electronic media).
4. Media planning, placement, and purchase (including, but not necessarily limited to, TV, radio, print, on-line, interactive, video, and other electronic modes).
5. Direct Response activities encompassing, but not necessarily limited to direct mail and direct email (national and local), direct TV or direct radio.

6. Comprehensive fulfillment operations.

7. Database management, prospect relationship management, and other information technology support activities consistent with current and evolving advertising industry practices. Contractor shall be responsible for the hosting, operation, maintenance, and upgrading of the Navy Advertising Leads Tracking System (NALTS) leads database system.

8. Contact Response or "call Center" operations.

9. Events marketing activities to include but not necessarily limited to management, scheduling, tracking, and upgrading of the Navy events marketing properties and activities and monitoring of its proper, effective use and return on investment. Maintenance of a method for the scheduling and display of scheduled events (possibly web based) and coordination with the various property vendors and NRDs is required.

10. Operation, maintenance, and upgrading of a state-of-the-art Internet website for Navy recruiting that is appealing and useful to the primary target audience, influencers, and diversity targets. At a minimum the contractor will at least initially operate and maintain the existing Navy.com, ElNavy.com and NavyReserve.com web sites.

11. Public relations capabilities, including the ability to develop and disseminate Public Service Announcements (PSAs) and to execute similar

promotional and image-building initiatives through free media channels.

12. Management and financial interfaces with all contracting and subcontracting components.

13. Training of its own personnel, as required, to meet the above Navy requirements and maintain state-of-the-art industry standard advertising capabilities and account management support in support of the Navy Recruiting mission.

14. Monitoring of all advertising and marketing efforts, analyzing and reporting on their effectiveness and return on investment is a requirement.

15. Make presentations periodically, both in person and via conference call and/or VTC, either at the contractor's facilities, CNRC, or other Navy locations. (The contractor is required to have VTC capability). Contractor will be required to transmit documents and briefs electronically (Word documents, Excel, Power Point, etc) and exchange email correspondence with Navy. All documents and emails must be able to interface with and be fully readable by Navy personnel on the Navy's PC based NMCI compliant system without any additional conversions/importing actions by Navy.

16. Crafting effective communications that appeal to this target audience in all areas of the country, a variety of ethnic, religious and economic groups ensuring a diverse stream of prospects for all

Navy programs, officer and enlisted, active and reserve.

Contractor services are directed to the Navy Active and Reserve Components recruiting and Navy awareness/brand building efforts. The contractor will interact and coordinate with other programs such as the DOD Joint Advertising Market Research Studies (JAMRS) and with other service recruiting advertising organizations as needed and appropriate.

Services to be performed include all advertising-related services directly prescribed by the Contracting Officer or proposed by the contractor and approved or implementation by the Contracting Officer. In all instances, the Navy Recruiting Command (CNRC) holds the ultimate right of approval for all deliverables under this contract.

While the remainder of this section and attachments included in Section J include and identify activities and practices that either are currently in the Navy's existing advertising program or may be desired elements in the Navy advertising program and for which the contractor must provide adequately for their continuation, evolution, or addition under this new contract, it is required and encouraged that the contractor continually propose alternate approaches to achieve the objectives of the Navy communications and that achieve recruiting goals. Similarly, the contractor is encouraged to continually propose approaches that enhance practices to accommodate emerging technologies and advances in the disciplines of advertising, prospect relationship management, and other applicable categories of expertise.

C.3 REQUIREMENTS

The following are required contractor capabilities and/or components of the Navy advertising and marketing program.

1. Research, Strategic Planning, Program Development, and Assessment.

Navy's program follows an annual cycle involving market research, planning development, execution and assessment. The contractor shall be capable of organizing, managing and executing these steps. The contractor shall have a strong account management team to adequately manage the day-to-day as well as longer term projects and planning, handle mid-course adjustments required by budget and/or recruiting goal changes, and provide rapid response to the frequent demands by Navy for assessments, briefings and alternate options/proposals for consumption by various levels and organizations of Navy management. The contractor shall organize and execute research, account planning, and account management in accordance with its own highest standards of performance and with industry best practices.

a. Research – Research shall be an integral part of the Navy's annual communications plan. The contractor shall propose advertising and marketing research it deems appropriate and necessary to ensure the successful execution of the Strategic Plan and the achievement of the Navy's recruiting objectives. The contractor shall be able to devise and conduct research by itself or through subcontractors in support of the Navy Strategic Communication Plan. Industry standards and current practices in the Navy program suggest that this research should, at a minimum:

(1). Address, test, and/or support the determination of strategic effectiveness of creative strategy and copy testing (pre and post), and media selection.

(2). Employ state-of-the-art methods in research; audience identification and market segmentation; media planning and buying; post analysis; and reporting.

(3). Conduct state-of-the-art methods of formal research to include focus groups and copy testing. Methodologies shall involve both quantitative and qualitative approaches.

(4). Utilize the findings of secondary market research such as the "Youth Polling Study" and the "Ad Tracking Study" conducted by the Navy Recruiting Command and JAMRS respectively. These studies provide additional advertising and marketing measures (i.e., reasons for joining the military, awareness and influence of advertising on decisions to join, etc.) for the target market or those who have already joined the Navy.

(5). The Navy encourages the contractor to draw on its collective expertise and experience in suggesting and implementing additional research and related innovative programs required to ensure the success of the Navy's recruiting mission, the execution of the annual Strategic Plan, and the resourceful application of mid-course corrections as necessary.

(6). The contractor shall provide to the Defense Human Resources Agency (DHRA) all requested information including, but not limited, national leads,

national advertising expenditures by media and impression, and direct mail data.

b. Strategic planning – Minimum requirements:

(1). Strategic Communications Plan. The contractor shall develop and propose to Navy a long term Strategic Communications Plan for Navy approval, outlining strategic level communications and marketing goals for the following 3 years (at a minimum). This plan is developed/revised annually in late spring. For the first year of this contract the initial strategic plan will be required 30 days after contract award with the first revision to take place in Spring 2006.

(2). Advertising and Marketing Plan. Annually, the contractor must develop a one-year Navy Recruiting Advertising and Marketing Plan for the following FY for Navy approval that achieves the strategic goals for that year, meets Navy's recruiting goals set for that FY, and any special goals or needs the Navy may specify. This plan will be developed as follows:

(a).Contractor shall utilize the Strategic Communications Plan described in paragraph b. (1), Navy recruiting goals for the next FY, and any Navy provided special requirements or needs to develop this plan for presentation and discussion with Navy. Navy will normally provide this guidance in mid-April each year.

(b).The contractor shall develop the annual plan and present it to Navy for discussion at an annual planning conference hosted by the contractor.

(3). Annual Planning Conference. The annual conference shall be held in a facility chosen by the contractor preferably at or near the contractor's facility. The facility must be able to accommodate at least fifteen (15) government employees. This conference will take place in late May and will last no more than five (5) working days. In planning the annual conference, the contractor is encouraged to draw on its full expertise and experience in joint planning and team-building for comparable engagements; and to recommend the format, location, agenda, and duration of this conference that best serves the collaborative relationship between the parties and the strategic objectives of the Navy recruiting program. The contractor is responsible for administering the conference with the advice and approval of the Navy. The conference will:

(a) Review the current year's communication plan and progress toward meeting its goals.

(b) Review relevant research conducted by the contractor and other activities (JAMRS, etc) as well as advances in industry practices and emerging technologies that may have an impact on the Navy's advertising and marketing program.

(c). Review, discuss and evaluate the agencies proposed annual plan for the next FY. The Navy requires an annual comprehensive and detailed Recruiting Advertising and Marketing Plan as the primary outcome of the conference. This plan shall address emerging tools and technologies in advertising practice and provide for their practical application where appropriate. It shall also include, but is not limited to, advertising and creative objectives and

strategies, media plans and flow charts, and specific cost elements and budget allocations. The activities detailed in the strategic plan must be executable and feasible within the constraints of the Navy's advertising budget.

(4). Following the conference. Navy shall evaluate the proposed plan and may ask for additional data or details. In any case, within 30 days, the Navy shall provide written comments/revisions needed to the plan. The contractor shall make necessary revisions within two weeks submitting a final plan along with a suitable executive summary to the Navy's Contracting Officer's Representative (COR). Navy shall then proceed to obtain approval for the final plan from Navy leadership. As part of this process, the contractor may be asked to make further presentations/explanations of the plan (a contractor briefing team may be required).

(5). The initial annual Advertising and Marketing Plan shall be presented by the contractor no later than 30 days after commencement of services concurrent with the Strategic Communications Plan. Navy shall engage the contractor in a shortened comment and discussion period followed by a revised plan being developed by the contractor. This plan shall then be presented with the assistance of the contractor to Navy leadership for approval. Due to time and budget considerations, it should be expected that, at least initially, most of the current creative materials would continue to be used through much of FY06.

c. Program Development. Following approval of the annual Advertising and Marketing Plan, the contractor shall develop detailed tactical plans to implement the media buys, new creative development,

etc. for review and approval by CNRC. Once approved, these plans shall be implemented at the start of the FY.

d. Assessment – The contractor shall provide Navy with continuous assessment of the efficiency and effectiveness of the Advertising and Marketing Plan. Assessment shall include, but not be limited to, the following:

(1). Tracking of gross leads generated, program eligible leads (PELs), conversion rate to PELs, conversion rate to contracts, cost per PEL, and cost per contract for all leads generating or direct response programs including events marketing efforts for both the active and reserve components.

(2). Tracking of appropriate awareness indicators such as those provided by JAMRS, outside sources and in house Navy/contractor research to gauge the effectiveness of Navy awareness building efforts against the various primary and secondary target audiences.

(3). Maintain a detailed accounting of program costs for the various programs of the annual plan such as national and local direct mail costs (by individual mailing as well as overall for each program – active enlisted, reserve enlisted, medical, etc.).

(4). Recommend other metrics and measures of effectiveness and return on investment deemed necessary and appropriate for approval by Navy.

(5). Be able to produce various displays (graphs, bar charts, etc.) and briefings of these assessment metrics for Navy use or brief the results as desired by Navy.

e. Additional Services – The contractor shall also provide the following additional services, subject to the provisions of the strategic plan and the needs of CNRC:

(1). The contractor shall provide continuous service, counsel, and evaluation of Navy marketing, advertising, and recruiting goals. This support should include, at a minimum, assistance in the development and execution of local marketing, advertising, merchandising and promotional activity and incentive programs conducted by, and on behalf of, the Navy. The scope, content, and objectives of these activities will be driven by the annual strategic plan or derived through mid-course evaluations of progress against overall objectives.

(2). The contractor shall conduct national, regional, and local marketing and advertising training and briefings at Navy conferences, seminars, and related events.

2. Creative Strategy, Execution, and Production.

Navy requires the contractor to perform at high levels of excellence and efficiency in the creative development and execution of advertising programs and support the goals of Navy Recruiting Command. The contractor shall develop and execute (including production) a creative approach for the Navy recruiting program that is innovative and state-of-the-art and implements the approved marketing strategies. Additionally, the creative development and execution shall effectively leverage the synergies possible through integrated engagement using parallel content "streams" such as print, electronic, digital and other media as appropriate. The contractor's program shall reflect the

contractor's best creative thought and industry best practices for integrated communication and audience engagement.

The following are baseline procedural requirements reflecting current processes in the Navy's program and are not meant to restrict the scope or originality of the contractor's approach to the Navy advertising and marketing.

a. General Stipulations. The contractor shall be fully responsible for all aspects of music rights and talent contracts, including any use of celebrity spokespersons.

(1). All creative work shall be original and shall be submitted in such form as specified by CNRC for review and approval by the Navy Recruiting Advertising approving official. The contractor shall maintain, inventory and preserve all digital content and files, films, tapes, commercials, slides, negatives, and any and all other items produced by the contractor on behalf of the Navy: No items can be destroyed or discarded without prior approval from the COR. The policy for casting of models for photo "shoots" is to use Navy personnel where possible.

(2). The new contractor shall obtain from the current contractor copies of all current Navy advertising including TV and radio commercials, print and electronic advertisements, fulfillment items, etc and maintain on file for use. The contractor shall also obtain details of the copyrights, music rights and talent contracts from the current contractor for file and continued use. It shall be assumed that all current advertising and marketing will continue to be used after award of the contract unless specifically agreed

by the Navy. Therefore the new contractor shall obtain and maintain all files, spots, rights, etc to ensure all forms of Navy communications and marketing efforts continue flawlessly from current contract to new contract.

(3). Trademark and copyrights. All campaign names, slogans, catchphrases shall be trademarked, servicemarked and/or registered copyright by the contractor and then assigned to the government to hold as necessary in accordance with Title 17 of the U.S. Code entitled "Copyright" and all implementing regulations.

(4). The contractor shall be required to coordinate various aspects of the creative design with Navy's in-house creative division including the use of the in house capabilities to design and produce printed creatives (Recruiter Assistance Devices (RADs)). Posters, signage, print ads, etc.) and develop and produce videos for fulfillment items.

b. Television and Video Content. The contractor shall maintain all film masters and master videotapes along with complete documentation concerning talent contracts, music rights, and any other information needed to determine legal issues involving network or cable broadcast, or any other use or distribution of any and all video products to any audience at any time. All raw film or video footage is the property of the U.S. Navy and shall be provided by the contractor, on request, at any time with use limited only by talent contracts.

All video products provided for recruiter use shall be in a format approved by the COR.

c. Radio. Master audiotapes of any radio commercials and/or digital audio content are to be maintained and inventoried as specified in paragraph 2.A above. Provisions concerning music rights and talent contracts are the same as specified above.

d. Newspapers. The contractor shall provide for local use and tailoring of newspaper print ads in a manner consistent with industry best practices. The contractor should review and update the ads contained in the ADPACK (listed in Attachment J-2) on an as needed basis to ensure synergy with and reflect any changes in the national advertising campaign. The contractor must devise its own mechanisms, in accordance with its own contractor processes and industry best practices, to meet the Navy's need in this regard.

e. Direct Response - Creative Materials and Templates. The contractor shall provide for efficient execution of national, regional and local mailings (LDM)/emailings and other direct engagement initiatives by the national HQ (CNRC) and field offices (NRDs) in a manner consistent with industry best practices. The contractor is responsible for creating, producing, managing and reporting on all aspects of national and local direct mail orders. Initially local direct mailings ordered by the NRDs will continue to be conducted based on current procedures and guidelines via a web-based ordering system and the Navy Leads Tracking System (NALTS) or equivalent. The contractor shall maintain and operate this system and provide an on-line guidebook to provide policy and procedures for the LDM program. The contractor is encouraged to recommend changes or alternate procedures that will enhance or improve the case and

efficiency of the Navy's direct response efforts including LDM. This historical information is provided for informational purposes only: Outgoing email – the average annual total is [redacted] Local Direct Mail – the average annual total is [redacted] National Direct Mail the average annual total is [redacted] Postage for the average annual National and Local Direct Mailing by performance period:

[redacted]

f. Internet. The contractor shall be required to host, maintain, and provide daily updates as needed to the Navy-owned web sites: www.navy.com, www.elnavy.com and www.navy.reserve.com. The contractor shall leverage current and emerging web, Internet protocol (IP), and rich media techniques and technologies for maximum effectiveness, in a manner consistent with advertising industry best practices. Electronic, internet based and interactive advertising and marketing beyond our web sites shall also be a required piece of the Navy communication plan and the contractor must be able to create and execute these aspects.

g. Collateral Materials – Print. The contractor shall be required to create digitized mechanicals in accordance with CNRC detailed specifications for submission to the Government Printing Office (GPO). This historical information is provided for informational purposes only: Print Production – the average annual total of 4 color print ads is 15: 10 for black and white print ads.

h. Public Service Announcement and Related Free-Media Outreach. At a minimum, the contractor shall support efforts in Public Service Announcements (PSA), including the completion of commercials and the maintenance of film, tapes, talent, music rights, etc., to determine legal usage.

3. Media, and Related Services.

The COR shall approve all media plans, schedules, purchase, and placement of advertising and related approaches as required under CLINs 0002/0005/0008/0011/0014. Under current practice, the contractor obtains, inventories, and maintains on file tearsheets, affidavits or other advertising industry standard proof-of-performance documents.

The following baseline requirements reflect current Navy recruiting practices in activities related to media administration and list management. They are not intended to be all-inclusive, nor are they intended to constrain the contractor's performance efficiency or its introduction of innovative approaches in its proposed program.

a. Paid Television and Radio Time. The contractor shall comply with advertising industry best practices for the placement of military service television and radio commercials. This may include submitting approved schedules to the JAMRS contracted advertising contractor for their information. The contractor shall use its best efforts to obtain the lowest commercial rate available for media placement with all media discounts and merchandising credits accruing to CNRC.

b. Paid Magazine Space. The contractor shall place ads utilizing JAMRS' Magazine Advertising Credit Systems (MACS) when evaluating, planning, and executing the placement of print advertisements.

c. Direct Response List Management. The Navy encourages the contractor to develop processes, automated systems, and standards for mail and other contact list management in accordance with industry best practices. The following are baseline requirements that have to be accommodated by the contractor:

(1). The contractor shall compile or procure lists in accordance with Navy Recruiting detailed specifications and/or utilize lists furnished by CNRC for direct mail-outs or execution through other direct response media.

(2). The contractor shall maintain and update these lists (where list procurement provisions allow) as required, incorporating list input from field sites and cleaning and "de-duping" them as required. The contractor must be able to quickly respond to no mail/no contact requests from private individuals or from government agencies/officials.

(3). The contractor shall provide copies of name lists from selected mailings to field sites for use by local Navy recruiters. The lists will be forwarded electronically or on diskettes and hard copy and arranged alphabetically and by zip code.

4. Prospect Relationship Management and Fulfillment Operations.

a. Prospect Relationship Management Support.

(1). The contractor shall be expected to operate, maintain and enhance (as necessary or required by Navy) the upgraded NALTS database system currently being fielded. No new systems shall be utilized without Navy approval. The NALTS database system provides advertising and leads tracking information and territory/zip code assignments for 31 Navy recruiting districts, 4 areas, and headquarters. NALTS tracks both local and national lead generation activity, provides lead generation analysis and tracking data, houses eligibility and fulfillment processes, and provides a means of two way communication for the transfer of information to and from the fulfillment house.

(2). The contractor shall also maintain specific national advertising and marketing information including data that provides in-depth information about individual advertising efforts, including costs, insertions, dates, designated fulfillment packages and response information. This data is used to generate specialized ad hoc reports for headquarters' managers to analyze advertising effectiveness and improve marketing strategies.

(3). The contractor shall provide role-based security access to NALTS system. This will allow the contractor and headquarters staff to run standard and special queries on an "as needed" basis.

(4). For information this upgraded NALTS system shall be a fully comprehensive and automated that, at a minimum:

(a). Permits continuous evaluation of advertising services performed under the terms of this contract and advertising performed at the field level,

with regard to effectiveness and efficiency of sales leads generating media.

(b). Permits local advertising planning, execution and evaluation.

(c). Tracks the effectiveness of sales lead follow-up and conversions of leads by field components into Navy accessions.

(d). Manages centralized list and package selection (e.g., select names from a centralized prospect list and select different components of the mailing from a menu system) and centralized mail operations in support of field offices.

(e). Permits the ability to query the system on an ad hoc basis and generate customized reports

(5). The contractor must also conduct ongoing studies and analyses of the relative effectiveness of all prospect engagement initiatives. At a minimum, the contractor must test and evaluate direct response approaches in all media in accordance with industry best practices.

(6). The contractor shall be required to perform the above functions for the active and reserve components for officer and enlisted programs. This may require additional enhancements to the up graded NALTS system.

(7). The contractor, at least initially, shall be required to interface with the CIRIMS system used by the Navy Reserve for the input, tracking, and assessment of leads and contracts.

b. The Fulfillment Program.

(1). The contractor shall manage the Fulfillment Program and enhance its operations and effectiveness in accordance with the Strategic Plan and industry best practices. These functions include providing the services necessary to conduct prompt response to inquiries coming from the target group, as well as any other responses received which represent requests for information about the Navy. The Navy receives and fulfills an estimated 300,000 – 375,000 requests from U.S. mail, the Internet, e-mail and telephone (1-800 #) sources per year.

(2). The contractor shall, at a minimum, perform the following:

(a). Furnish/mail fulfillment packages to prospects within 24 hours of contacting the Navy.

(b). Forward information on individuals who meet established criteria (age, education, etc.) simultaneously via electronic and/or print means to Navy field sites.

(c). Receive, inventory, stock, and warehouse fulfillment materials furnished by various vendors and/or the Government Printing Office (GPO).

(d). Maintain additional files on respondents (i.e., Coming of Age File, Coming of Education File, Suppression File).

(e). Process special requests to provide materials to schools, colleges, guidance counselors, parents, teachers, field offices, etc.

(3). The contractor shall audit operations at all fulfillment center(s) in accordance with industry best

practices and the explicit objectives of the Strategic Plan. Additionally, the contractor must provide marketing and management reports as necessary to ensure the smooth functioning of the advertising system and the successful execution of the Strategic Plan. The contractor is encouraged to devise a responsive report facility in keeping with industry best practices. Reporting provisions and a list of required reports are listed in Attachment J-3.

(4). A list of fulfillment-related CNRC owned property that will be made available to the contractor within 30 days after contract award is provided in Attachment J-2.

a. Operation of the Call Center.

(1). The contractor shall staff and manage either directly or by means of contracting a third party a Call Center in accordance with industry standards for such operations. The Center currently consists of equipment and personnel necessary to answer calls to the Navy's 1-800 telephone numbers, as well as other categories of incoming inquiries.

(2). Trained representatives shall be on call 24 hours a day, 365 days a year to handle incoming inquiries from prospects for both the active and reserve components. At a minimum, this operation must incorporate Interactive Voice Response (IVR). The contractor must implement and administer other screening/prospect relationship management resources as determined in the Strategic Plan. The Navy receives an estimated 200,000 telephone calls each year on its toll-free number.

(3). Ancillary support services, including but not limited to the maintenance of post office boxes, shipping of materials to the field, the preparation and shipping of periodical reports, and the storage of a large variety of items, must also be provided by the contractor.

1. Events Marketing

The contractor shall be required, at a minimum, to plan and execute comprehensive events marketing activities to encompass the following:

a. Recommend, contract and coordinate the various Navy events marketing properties. The contractor will provide a web based scheduling systems for use by Navy to request specific properties at specific events/sites and dates, display the Navy approved schedule including a map feature showing events by date/month and/or NRD and/or type of event on a map of the US. A list of events marketing services required by CNRC is provided in Attachment J-4.

b. Periodically assess the effectiveness of the various properties and events the Navy attends as well as the effectiveness of the recruiter's use of each property/event. This shall require periodic on site evaluations. The contractor shall provide the Navy with reports displaying the usage and effectiveness of properties. The contractor shall make recommendations for the improvement, enhancement or replacement of the properties to ensure properties are appealing to the intended target audience and make an impact on them and recommend changes to Navy's use/scheduled events to maximize effectiveness and ROI for their various uses including diversity events.

c. Produce and update an events marketing guidebook for use by field recruiters and PAOs for the scheduling of properties, setup guidance for maximizing usefulness and appeal of the properties, and best event marketing practices for target audiences and for influencer audiences including best positioning, personal interaction and use of promotional items/RADs.

d. Ensure that the various properties maintain consistent graphics and signage that are in keeping with the appropriate Navy communications plan and the intended audience.

e. Recommend changes to the Navy's promotional items and RADs to enhance Navy's events marketing efforts.

f. Assist in timing of recruiters in best events marketing practices at various meetings, conferences and other venues throughout the year as may be required.

6. Account Management and Team Execution.

The contractor shall have on staff an account management team in keeping with advertising industry best practices and its own most successful operating processes. The contractor shall provide high levels of account service across the full spectrum of industry-standard management activities including, but not limited to, IT support; client (Navy) interaction and comprehensive reporting; financial administration and oversight; and human capital/team management, among other possible factors.

The following are baseline functional requirements reflective of current practice in the Navy advertising program. The contractor shall accommodate these

requirements efficiently in its proposed program. They are not meant to be all-inclusive nor restrictive to the contractor's approach to Navy advertising and marketing.

a. Management and Financial Interface Requirements

(1). Performance of work shall be subject to approaches outlined in the Strategic Plan and to input provided by CNRC. CNRC will provide the contractor desired completion dates and possible lines of inquiry. This input shall otherwise complement the general scope of the contract and support the implementation of the Strategic Communications Plan and annual Advertising and Marketing Plan.

(2). The contractor must maintain adequate liaison with cognizant personnel within CNRC to ensure the successful execution of the plans. Conference reports shall be submitted to the COR within 3 working days after all major meetings/ conferences. At a minimum, the contractor shall conduct a weekly conference call with the COR and other key CNRC personnel to update key projects, discuss upcoming milestones and resolve pressing issues. Quarterly videoconferences and periodic site visits by the contractor to CNRC or vice versa shall be required.

(3). The contactor shall prepare, update, and present various data necessary to the management/financial review of the contract in addition to reporting requirements specified elsewhere in this section as follows:

(a). An allocation/expenditure report by project is required. The contractor shall maintain a

system that accounts for all costs (labor as well as other direct expenses) for all projects, such as production of advertising, direct mail, etc. This shall be kept on a project basis and a monthly report detailing all project costs be provided to CNRC Financial Manager.

(b). Various reports (i.e., DD 804, OMB Exhibit 300) are required to be furnished by the contractor to the CNRC Financial Manager. The reports and their frequencies are listed in Attachment J-3.

(4). The contractor shall provide other financial and management data and related ad hoc reports to CNRC when requested.

b. Human Capital and Capabilities.

(1) The contractor is responsible for configuring and managing its team in the implementation of the Navy recruiting effort. The contractor shall designate one main point of contact for all issues related to performance of this contract and identify other critical personnel/points of contact for this requirement.

(2) The contractor's current clients shall not represent a conflict of interest with the Navy account/brand.

(3) During the year, Navy has projects of all types in preparation and/or operation and various plans and strategies in various stages of development or refinement. These projects can range from creation and production of a single print advertisement to planning and executing an on-line communications campaign. The contractor shall maintain an adequate, experienced staff to handle these routine requirements

on a day-to-day basis as well as handle the multitude of rapid response briefs, budget evaluations, and new/modified requirements.

7. Additional Information

a. For Contract Line Item Numbers (CLINs) 0003/0006/0009/0012/0015. Additional Advertising Services are for emergent services not covered by the Strategic Plan, but considered to be within scope of the overall contract. These CLINs will be awarded on a task order basis, if and when the Navy has a requirement for emergent, unplanned services not covered by the Strategic Plan. There is no guarantee that this CLIN will be utilized. However, if it is, the contractor will receive a statement of work from the Ordering Officer/Contracting Officer requesting a proposal. The contractor will propose the number of hours, the labor segment mix (from the 6 labor segments) and ODC's. After negotiation of the hours and ODC's, a firm fixed-price task order will be issued based on the pre-determined hourly rates proposed for this CLIN.

b. A glossary of terms used in this statement of work is provided in Attachment J-5.

REQUIRED STANDARD OF WORKMANSHIP (FISC DET PHILA)(OCT 1992)

Unless otherwise specifically provided in this contract, the quality of all services rendered hereunder shall conform to the highest standards in the relevant profession trade or field of endeavor. All services shall be rendered by or supervised directly by individuals fully qualified in the relevant profession, trade or field, and holding any licenses required by law.

EMPLOYMENT OF DEPARTMENT OF DEFENSE PERSONNEL RESTRICTED

In performing this contract, the contractor will not use as a consultant or employ (on either a full or part time basis) any current Department of Defense (DoD) personnel (civilian or military) without the prior approval of the Contracting Officer. Such approval may be given only in circumstances where it is clear that no laws and no DoD or Navy instructions, regulations, or policies might possibly be contravened and no appearance of a conflict of interest will result.

DURATION OF CONTRACT PERIOD (FISC DET PHILA) (OCT 1992)

(a) The ordering period shall continue in effect during the period ending * months after date of award. The performance period shall continue in effect during the period ending ** months after date of contract.

*

**



TIME OF PERFORMANCE (FISC DET PHILA) (OCT 1992)

Services to be furnished hereunder shall be performed and completed with the following Schedule of Services, as delineated within page 2 through 9 of the solicitation:



COMMUNICATIONS

(a) Except as specified in paragraph (b) below, no order, statement, or conduct of Government personnel who visit the Contractor's facilities or in any other

manner communicates with Contractor personnel during the performance of this contract shall constitute a change under the "Changes" provision of FAR clause 52.212-4 "Contract Terms and Conditions – Commercial Items (Oct 2003)" of this contract.

(b) The Contractor shall not comply with any order, direction or request of Government personnel unless it is issued in writing and signed by the Contracting Officer, or is pursuant to specific authority otherwise included as a part of this contract.

(c) The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract and, notwithstanding provisions contained elsewhere in this contract, the said authority remains solely the Contracting Officer's. In the event the contractor effects any change at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any increase in charges incurred as a result thereof. The address and telephone number of the Principal Contracting Officer is:

Brian Excell
FISC Norfolk Contracts Department Philadelphia Division
700 Robbins Ave., Bldg. 2B
Philadelphia, PA. 19111-5083
Phone (215) 697-9610

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (252.209-7004) (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of [redacted] with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

FISC POINT OF CONTACT

The point of contact at the contracting office regarding this solicitation/contract is Frank Moretti, Code 204.12A, who can be reached at phone (215) 697-9611 or by email at frank.moretti@navy.mil.

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (252.209-7004) (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of [redacted] with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

SMALL BUSINESS SUBCONTRACTING PLAN

The target for offerors' Small Business Subcontracting Plan for this requirement is 12% of the total planned subcontracting dollars. See FAR Clause 52.219-9 for further details.

INVOICE INSTRUCTIONS

1. Invoices submitted for Advertising Services under CLINs 0001, 0004, 0007, 0010, 0013 shall be submitted at the end of each month for the monthly amount specified in the pricing schedule.

2. Invoices submitted for Space Charges and Media Placement under CLINs 0002, 0005, 0008, 0011, 0014 shall be billed at the actual market price less rebates and submitted at the end of the month in which the expenses were incurred.

3. Task orders for Additional Advertising Services placed under CLINs 0003, 0006, 0009, 0012, 0015 utilizing the Fixed Rate Segment Hours and Other Direct Expenses shall be billed as follows:

a. Task orders with a performance period of 90 days or less shall be billed only after all work has been completed.

b. For any task order with a performance period exceeding 90 days, the Government and the contractor may establish a billing arrangement prior to the award of the order. Any such billing arrangement will reflect either (1) monthly amounts equal to the services and/or supplies rendered during each month, or (2) an equal amount prorated each month over the course of the performance period.

c. When no pre-arranged method of billing is specified in a task order, payment shall be made upon the completion of the services/supplies in the order.

d. Invoices for these task orders shall only be submitted at the end of the month unless

otherwise approved by the Contracting/Ordering Officer on a case-by-case basis.

4. The contractor shall submit completed invoices for all CLINs, including backup documentation for space charges and media placement (CLINs 0002, 0005, 0008, 0011, 0014) and for additional advertising services (CLINs 0003, 0006, 0009, 0012, 0015) to Navy Recruiting Command, 5722 Integrity Drive, Building 784, Millington, TN 38054, Attn: Advertising and Marketing Department, N9.

MINIMUM AND MAXIMUM QUANTITIES (FISC DET PHILA) (OCT 1992)

As referred to in paragraph (b) of the "Indefinite Quantities" clause of this contract, the total contract minimum quantity is a total of [redacted] worth of orders at the contract unit price(s). The contract maximum quantity is a total of the total estimated amount of the contract.

ORAL ORDERS (INDEFINITE DELIVERY CONTRACTS) (NAVSUP 5252.216-9402) (JAN 1999)

(a) Oral orders may be placed provided the following conditions are complied with:

(1) No oral order will exceed [redacted] or such lesser amount as may be specified elsewhere in the schedule of this contract.

(2) The Contractor will furnish with each shipment a delivery ticket, in triplicate, showing: contract number, order number under the contract, date order was placed, name and title of person placing order, an itemized listing of supplies or services

furnished, unit price and extension of each item, and delivery or performance date.

(3) Invoices for supplies or services furnished in response to oral orders will be accompanied with a received copy of each related delivery ticket.

(4) The ordering activity shall designate in writing the names of individuals authorized to place oral orders and will furnish a copy thereof to the Contractor.

(5) Written confirmation of oral orders will be issued as a means of documenting the oral order within ten (10) working days or oral orders will be confirmed twice a month, in writing, when more than one (1) oral order is consolidated for a single confirmation.

APPOINTMENT OF CONTRACTING OFFICER'S REPRESENTATIVE (FISC DET PHILA) (OCT 1992)

(a) The Contracting Officer hereby designates the following individual as Contracting Officer's Representative(s) (COR) for this contract:

____TO BE DETERMINED_____

NAME CODE

_____

MAIL ADDRESS

_____

TELEPHONE NUMBER

(b) In the absence of the COR named above, all responsibilities and functions assigned to the COR shall be the responsibility of the alternate COR acting on

behalf of the COR. The Contracting Officer hereby appoints the following individual as the alternate COR:

____John Bird_____N9B
NAME CODE

Navy Recruiting Command, 5722 Integrity Drive, Bldg. 784, Millington, TN 38053
MAIL ADDRESS

901-874-9423_____
TELEPHONE NUMBER

(c) The COR will act as the Contracting Officer's representative for technical matters, providing technical direction and discussion as necessary with respect to the specification or statement of work, and monitoring the progress and quality of contractor performance. The COR is not an Administrative Contracting Officer and does not have authority to take any action, either directly or indirectly, that would change the pricing, quantity, quality, place of performance, delivery schedule, or any other terms and conditions of the contract (or delivery/task order), or to direct the accomplishment of effort which goes beyond the scope of the statement of work in the contract (or delivery/task order).

(d) It is emphasized that only a Contracting officer has the authority to modify the terms of the contract, therefore, in no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic contract between the contractor and any other person be effective or binding on the Government. When/if, in the opinion of the contractor, an effort outside the existing scope of the contract (or delivery/task order) is requested, the

contractor shall promptly notify the PCO in writing. No action shall be taken by the contractor under such direction unless the PCO or ACO has issued a contractual change or otherwise resolved the issue.

WRITTEN ORDERS (INDEFINITE DELIVERY CONTRACTS)(NAVSUP 5252.216-9403) (JAN 1992)

Written order (on SF 1449) will contain the following information consistent with the terms of the contract:

(a) Date of order.

(b) Contract number and order number.

(c) Item number and description, quantity ordered, unit price and contract price.

(d) Delivery or performance date.

(e) Place of delivery or performing (including consignee).

(f) Packaging, packing, and shipping instructions, if required.

(g) Accounting and appropriation data.

(h) Any other pertinent information.

ORDERING OFFICE

The Ordering Offices for this contract shall be as follows:

Task orders valued up to $5M: Navy Recruiting Command, Millington, TN

Task orders valued over $5M: FISC Norfolk, Contracting Department, Philadelphia Division.

CONTRACT ADMINISTRATION PLAN (CAP) FOR FIXED PRICE CONTRACTS

In order to expedite the administration of this contract, the following delineation of duties is provided. The names, addresses and phone numbers for these offices or individuals are included elsewhere in the contract award document. The office or individual designated as having responsibility should be contacted for any questions, clarifications, or information regarding the administration function assigned.

1. The Procuring Contract Office (PCO) is responsible for:

   a. All pre-award duties such as solicitation, negotiation and award of contracts.

   b. Any information or questions during the pre-award stage of the procurement.

   c. Freedom of information inquiries.

   d. Changes in contract terms and/or conditions.

   e. Post award conference.

2. The Contract Administration Office (CAO) is responsible for matters specified in the FAR 42.302 and DFARS 42.302 except those areas otherwise designated as the responsibility of the Contracting Officer's Representative (COR) or someone else herein.

3. The paying office is responsible for making payment of proper invoices after acceptance is documented.

4. The Contracting Officer's Representative (COR) is responsible for interface with the contractor and performance of duties such as those set forth below. It is emphasized that only the PCO/CAO has the

authority to modify the terms of the contract. In no event will any understanding, agreement, modification, change order, or other matter deviating from the terms of the basic contract between the contractor and any other person be effective or binding on the Government. If in the opinion of the contractor an effort outside the scope of the contract is requested, the contractor shall promptly notify the PCO in writing. No action may be taken by the contractor unless the PCO or CAO has issued a contractual change. The COR duties are as follows:

a. Technical Interface

(1) The COR is responsible for all Government technical interface concerning the contractor and furnishing technical instructions to the contractor. These instructions may include: technical advice/recommendations/clarifications of specific details relating to technical aspects of contract requirements; milestones to be met within the general terms of the contract or specific subtasks of the contract; or, any other interface of a technical nature necessary for the contractor to perform work specified in the contract or order. The COR is the point of contact through whom the contractor can relay questions and problems of a technical nature to the PCO.

(2) The COR is prohibited from issuing any instruction which would constitute a contractual change. The COR shall not instruct the contractor how to perform. If there is any doubt whether technical instructions contemplated fall within the scope of work, contact the PCO for guidance before transmitting the instructions to the contractor.

b. Contract Surveillance

(1) The COR shall monitor the contractor's performance and progress under the contract. In performing contract surveillance duties, the COR should exercise extreme care to ensure that he/she does not cross the line of personal services. The COR must be able to distinguish between surveillance (which is proper and necessary) and supervision (which is not permitted). Surveillance becomes supervision when you go beyond enforcing the terms of the contract. If the contractor is directed to perform the contract services in a specific manner, the line is being crossed. In such a situation, the COR's actions would be equivalent to using the contractor's personnel as if they were government employees and would constitute transforming the contract into one for personal services.

(2) The COR shall monitor contractor performance to see that inefficient or wasteful methods are not being used. If such practices are observed, the COR is responsible for taking reasonable and timely action to alert the contractor and the PCO to the situation.

(3) The COR will take timely action to alert the PCO to any potential performance problems. If performance schedule slippage is detected, the COR should determine the factors causing the delay and report them to the PCO, along with the contractor's proposed actions to eliminate or overcome these factors and recover the slippage. Once a recovery plan has been put in place, the COR is responsible for monitoring the recovery and keeping the PCO advised of progress.

c. Invoice Review and Approval/Inspection and Acceptance

(1) The COR is responsible for quality assurance of services performed and acceptance of the services or deliverables. The COR shall expeditiously review copies of the contractor's invoices or vouchers, certificate of performance and all other supporting documentation to determine the reasonableness of the billing. In making this determination, the COR must take into consideration all documentary information available and any information developed from personal observations.

(2) The COR must indicate either complete or partial concurrence with the contractor's invoice/voucher by executing the applicable certificate of performance furnished by the contractor. The COR must be cognizant of the invoicing procedures and prompt payment due dates detailed elsewhere in the contract.

(3) The COR will provide the PCO and the CAO with copies of acceptance documents such as Certificates of Performance.

d. Contract Modifications. The COR is responsible for developing the statement of work for change orders or modifications and for preparing an independent government cost estimate of the effort described in the proposed statement of work.

e. Administrative Duties

(1) The COR shall take appropriate action on technical correspondence pertaining to the contract and for maintaining files on each contract. This includes all modifications, government cost estimates,

contractor invoices/vouchers, certificates of performance, DD 250 forms and contractor's status reports.

(2) The COR shall maintain files on all correspondence relating to contractor performance, whether satisfactory or unsatisfactory, and on trip reports for all government personnel visiting the contractor's place of business for the purpose of discussing the contract.

(3) The COR must take prompt action to provide the PCO with any contractor or technical code request for change, deviation or waiver, along with any supporting analysis or other required documentation.

f. Government Furnished Property. When government property is to be furnished to the contractor, the COR will take the necessary steps to insure that it is furnished in a timely fashion and in proper condition for use. The COR will maintain adequate records to ensure that property furnished is returned and/or that material has been consumed in the performance of work.

g. Security. The COR is responsible for ensuring that any applicable security requirements arc strictly adhered to.

h. Standards of Conduct. The COR is responsible for reading and complying with all applicable contractor standards of conduct and conflict of interest instructions.

i. Written Report/Contract Completion Statement.

(1) The COR is responsible for timely preparation and submission to the PCO, of a written,

annual evaluation of the contractors performance. The report shall be submitted within 30 days prior to the exercise of any contract option and 60 days after contract completion. The report shall include a written statement as to the use made of any deliverables furnished by the contractor. If the Contractor Performance Assessment Reporting System (CPARS) is applicable to the contract you are responsible for completing a Contractor Performance Assessment Report (CPAR) in the CPARS Automated Information System (AIS). The initial CPAR, under an eligible contract, must reflect evaluation of at least 180 days of contractor performance. The completed CPAR, including contractor comments if any, (NOTE: contractors are allowed 30 days to input their comments) should be available in the CPARS AIS for reviewing official (PCO) review no later than 270 days after start of contract performance. Subsequent CPARs covering any contract option periods should be ready at 1-year intervals thereafter.

(2) For contracts where delivery orders arc issued, one consolidated report which addresses all actions under the contract may be submitted.

5. The Technical Assistant (TA), if appointed, is responsible for providing routine administration and monitoring assistance to the COR. The TA does not have the authority to provide any technical direction or clarification to the contract. Duties that may be performed by the TA are as follows:

a. Identify contractor deficiencies to the COR.

b. Review contract/delivery order deliverables, recommend acceptance/rejection, and provide the COR with documentation to support the recommendation.

c. Assist in preparing the final report on contractor performance for the applicable contract/delivery order in accordance with the format and procedures prescribed by the COR.

d. Identify contract noncompliance with reporting requirements to the COR.

e. Evaluate the contractor's proposals for specific delivery orders and identify, for the COR, any potential problems, areas of concern, or issues to be discussed during negotiations.

f. Review contractor status and progress reports, identify deficiencies to the COR, and provide the COR with recommendations regarding acceptance, rejection, and/or Government technical clarification requests.

g. Review invoices for the appropriate mix of types and quantities of labor, materials, and other direct costs, and provide the COR with recommendations to facilitate COR certification of the invoice.

h. Provide the COR with timely input regarding technical clarifications for the statement of work, possible technical direction to provide the contractor, and recommend corrective actions.

i. Provide detailed written reports of any trip, meeting, or conversation to the COR subsequent to any interface between the TA and contractor.

CLAUSES AND PROVISIONS INDEFINITE DELIVERY

Clause No.	Title
52.216-18	Ordering (OCT 1995) (a) issued from _*_ through_**_ * Date of Award ** 12 months thereafter; 60 months if all options are exercised.
52.216-19	Order Limitations (OCT 1995) (a) less than _[redacted]_ (b)(1) in excess of _the total estimated amount of the contract_ (b)(2) in excess of _the total estimated amount of the contract_ (b)(3) within _10_ days (d) within _7_ days
52.216-22	Indefinite Quantity (OCT 1995) (d) _66 months_
52.217-9	Option to Extend the Term of the Contract (MAR 2000) (a) prior to contract expiration (b) at least _0_ days (c) not exceed _60_ months

OFFEROR REPRESENTATIONS AND CERTIFICATIONS–COMMERCIAL ITEMS (FAR 52.212-3) (APR 2002) ALTERNATE 1 (APR 2002) Incorporated By Reference

The following provisions are hereby incorporated by reference:

Provision No.	Title
52.215-1	Instructions to Offerors Competitive Acquisition (JAN 2004)
52.215-3	Request for Information or Solicitation for Planning Purposes (OCT 1997)
52.222-46	Evaluation of Compensation for Professional Employees (FEB 1993)
52.232-38	Submission of Electronic Funds Transfer Information With Offer (MAY 1999)

SERVICE OF PROTEST (FAR 52.233-2) (AUG 1996)

(a) Protests, as defined in Section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from

FISC Norfolk, Contracting Department Philadelphia Division,
700 Robbins Avenue, Bldg. 2B
Philadelphia, PA 19111-5083
Brian Excell, Code 204.12
(215) 697-9610

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FAR 52.252-1) (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

http://www.arnet.gov.far/ FAR
http://www.acq.osd.mil/dp/dars/dfars/ DFARS
http://farsite.hill.af.mil/ FAR/DFAR

TYPE OF CONTRACT (FAR 52.216-1) (APR 1984)

The Government contemplates award of an Indefinite Delivery/Indefinite Quantity, Firm Fixed Price type contract resulting from this solicitation.

SUBMISSION OF PROPOSALS (BEST VALUE) (ORAL PRESENTATIONS) (FISC NORFOLK DET PHILA) (MAR 2000) Incorporated By Reference

EVALUATION CRITERIA AND THE BASIS FOR AWARD (FISC NORFOLK DET PHILA) (MAR 2000)

Incorporated By Reference

SECTION J- ATTACHMENTS

ATTACHMENT J-1 RECRUITING GOALS FOR FY05 AND FY06

ATTACHMENT J-2 - GOVERNMENT FURNISHED ITEMS

ATTACHMENT J-3 - REQUIRED REPORTS

ATTACHMENT J-4- EVENTS MARKETING SERVICES

ATTACHMENT J-5 - GLOSSARY OF TERMS

Attachment J-1

CNRC RECRUITING GOALS FOR FY2005 AND FY2006

(ACTIVE DUTY GOALS)

ACTIVE DUTY – GENERAL ENLISTED ACCESSION PLAN

		FY05	FY06
	Description	Goals	Goals
	General Enlisted	36,665 Contracts	35,000 Accessions

(ACTIVE DUTY OFFICERS)

FY05 OFFICER DESIGNATOR ACCESSION PLAN

		FY05	FY06
Designator	Description	Goals	Goals
	OCS Programs		
1165	Surface (Conventional)	18	43
1165	Surface (Nuclear)	32	32
1175	Submarine (NUPOC)	107	93
1185	Special Warfare	10	
1195	Special Operations	2	
1375	Naval Flight Officer	81	60
1395	Pilot	106	40
1525	Aviation Main Duty Officer	23	2
1645	Cryptology	15	14

1635	Intelligence	53	7
1635	Public Affairs	1	1
3105	Supply Corps	129	133
5105	Civil Engineer Officer	68	66
	Direct Procurement		
1205NI	Nuclear Instructor	26	26
1205NR	Naval Reactors Engineer	8	6
2105	Medical Corps (MC)	15	10
	Direct Procurement - 10		
	Reserve Recall - 5		
2205	Dental Corps (DC)	15	60
	Direct Procurement -10		
	Reserve Recall - 5		
2305	Medical Services Corps	70	77
	Reserve Recall - 0		
2905	Nurse Corps (NC)	99	113
	Direct Procurement - 84		
	Reserve Recall - 15		
2505	JAG Corps	7	3
4105	Chaplin (CHC)	40	45

Note: Assumes FY06 Goals are the same as FY05 Goals unless otherwise noted.

ACTIVE DUTY OFFICERS (CONTINUED)

		FY05	FY06
Designator	Description	Goals	Goals
	Student Designator (19XX)		
1925	DC	5	10
1945	CHC	40	40
1955	JAGC		45
	FY-06 (Grad Law School '05)	21	
	FY-07 (Grad Law School '06)	26	
1975	HPSP MC (Note 1)	295	300
1985	HPSP DC (Note 1)	85	70
1995	HPSP MSC (Optometry) Note 1	9	6
	Other Student/Aid Programs		
	Financial Assistance Programs (FAP)		
2105	Medical Corps (Note 1)	20	28
2205	Dental Corps (Note 1)	6	6
NCP	Nurse Candidate Program (NCP) (Note 1)	55	55
HSCP	MSC (Note 1)	40	40

HSCP	DC (Note 1)	30	38
Note 1	Breakout of Medical		
	program goals will be		
	provided to CNRC by		
	cognizant Officer		
	Community Managers		
	SEPCOR.		

RESERVE GOALS

RESERVE - GENERAL ENLISTED ACCESSION PLAN

		FY05	FY06
	Description	Target	Target
	General Enlisted Reserve	13,491 Accessions	9,000 Accessions

RESERVE OFFICERS
FY05 OFFICER DESIGNATOR ACCESSION PLAN

		DCO	Vet	Total
Designator		Target	Target	Target
1105*				13
1115**				254
1125**				69
1135				20
1145				10
13055				5

1315**				315
1325**				53
14x5		15	15	30
1515		15	15	30
1525		5	5	10
1605				10
1615		20	10	30
1625/1675**		5	20	25
1635		100	80	180
1655		5	5	10
1805		5	5	10
2105				85
2205				18
2305				20
2505				40
2905				80
3105		35	65	100
4105		10	30	40
5105		32	72	104
LDO/CWO				104
Total				1667

*May fill 1000 coded billets

**May fill 1000 and 1050 coded billets

RESERVE OFFICER GOALS (CONTINUED)

**RESERVE OFFICER - MEDICAL CORPS (2105)

SSP	AQD	Description	Target
15AO		Aviation Medicine	4
15BO		Anesthesia, General	10
1581		Anesthesia, Subspecialty	3
15CO		Surgery General	10
15C1		Surgery, Subspecialty	
	6CD	Thoracic/Cardiovascular Surgeon	1
	6CE	Colon Rectal Surgeon	3
	6CI	Peripheral Vascular Surgery	2
	6CJ	Plastic Surgery	1
	6CM	Trauma Surgery	2
	62C	Critical Care Surgeon	2
15DO		Neurological Surgery, General	3
15EO		Obstetrics/Gynecology, General	1
15FO		General Medicine	2
15GO		Ophthalmology, General	2
15HO		Orthopedic Surgery, General	2
15H1		Orthopedic Surgery, Subspecialty	5
15IO		Otolaryngology	2
15JO		Urology	1
15KO		Preventive Medicine, General	1

15MO		Pathology, General	1
16NO		Dermatology, General	1
16PO		Emergency Medicine, General	4
16OO		Family Practice, General	1
16R1		Internal Medicine, General	1
	6RG	Cardiovascular Internist	3
	6RL	Gastroenterology	1
	6RP	Infectious Disease	1
	6RQ	Nephrology	1
	6RR	Pulmonology	3
	62C	Critical Care Internist	4
16TO		Neurology, General	1
16XO		Psychiatry, General	4
16YO		Diagnostic Radiology	2
TOTAL			85

**Dental Corps (2205

SSP	AOD	Description	Target
1700		General Dentist	10
1750		Oral Maxillofacial Surgeon	8
Total			18

Accessions are for Lieutenant Commanders and below only. All others are a case by case and must have N16 approval.

RESERVE OFFICER GOALS (CONTINUED)

FY05 Accession Plan For Health Care Designators by Specialty

**Medical Service Corps (2305)

SSP	Description	Target
1801	Patient Administrator	2
1802	Medical Logistics	3
1836	Physiologist	1
1841	Child Psychology	1
1842	Neuropsychology	1
1843	Medical Psychology	1
1861	Industrial Hygiene	2
1865	Medical Technology	2
1887	General Pharmacy	1
1892	Podiatry	1
3130	Manpower	2
3121	Medical Logistician	1
6201	Info Systems	2
Total		20

**Nurse Corps (2905)

SSP	Description	Target
1900	Professional Nurse	34
1910	Medical Surgical Nursing	10
1920	Maternal/Infant Health Nursing	2
1930	Psychiatric Nursing	4
1950	Perioperative Nursing	20
1960	Critical Care Nursing	10
1972	Anesthesia	2

Total		82

**Accessions are for Lieutenant Commanders and below only

RESERVE OFFICER GOALS (CONTINUED)

FY05 QUOTAS FOR HEALTH CARE PROFESSIONAL SPECIALTIES WITH CRITICAL WARTIME SHORTAGES

The following critically short health care specialties are currently manned at less than optimal levels as determined by COMNAVRESFORCOM N16. They are eligible to apply for Special Pay, Stipend and/or Loan Repayment Program(s) (LRP). Applicants must be Board eligible or Board certified in a specialty for Special Pay (Note: The surgical subspecialty of Thoracic/Cardiovascular Surgery is eligible only after a minimum five year residency in General Surgery.

Medical Service Corps (2105

SSP	AQD	Description	Target
15BO		Anesthesia, General	10
15CO		Surgery, General	10
15C1		Surgery, Subspecialty	
	6CD	Thoracic/Cardiovascular Surgeon	1
	6CE	Colon Rectal Surgeon	3
	6CI	Peripheral Vascular Surgery	2
	6CJ	Plastic Surgery	1
	6CM	Trauma Surgery	2
15DM		Neurological Surgery, General	3

15H1		Orthopedic Surgery, Subspecialty	5
15JO		Urologist	1
16R1		Internal Medicine Subspecialty	
	6RG	Cardiovascular Internist	3
	6RL	Gastroenterology	1
	6RP	Infectious Disease	1
	6RO	Nephrology	1
	6RR	Pulmonology	3
TOTALS			47

**Dental Corps (2205)

SSP	Description	Target
1750	Oral Surgery	10
TOTAL		10

**Nurse Corps (2905)

SSP	Description	Target
1900	Professional Nursing	34
1910	Medical Surgical Nurse	10
1950	Periooperative Nursing	10
1960	Critical Care Nursing	10
TOTAL		64

*Subspecialties 15Cl and 16Rl are AQD specific

**Accessions are for Lieutenant Commanders and below only. All others are case by case and must have N16 approval.

ATTACHMENT J-2
GOVERNMENT FURNISHED ITEMS

1. Navy Advertising Leads Tracking System (NALTS) Database:

   The advertising management and leads tracking database and information system consists of five interrelated parts: field and national leads tracking information, field and national advertising planning and execution tracking information, field site territory and zip code assignments, eligibility and fulfillment processing.

2. Zip Code/NRS Territory Maintenance Table (within NALTS)

3. Physical Inventory for Fulfillment Operations

   a. Information Booklets (e.g., Accelerate Your Life (AYL) Brochure and equivalent booklets for other programs)

   b. NOIC Stationery Envelopes, letterhead, etc.

   c. Prospect Cards

   d. Premiums (e.g., posters, patches, CDs)

   e. Electronic copies of prior year reports

4. Documentation

   a. Operations "standard operating procedures" (SOPs)

   b. System Design Documentation

   c. Program Code

   d. User Guides to Operating Systems

   e. Eligibility and Fulfillment Processing

5. ADPACK Catalog - includes approximately 100-200 small classified ads and 25-30 display ads ranging in size from 1/8 to 1/2 page ads. Photography used in these ads is black and white

6. Digital Inventory of Creative Executions.

ATTACHMENT J-3
REQUIRED REPORTS

1. Financial Reports Required – Submitted to CNRC N9C, Budget/Contracting:

   a. Form DD804 – Recruiting Resources Summary Report - (monthly)

   b. Office of Management and Budget (OMB) Exhibit 300 – (relating to www.navy.com) (frequent data calls)

   c. Allocation/Expenditure Report by Project (Labor and Other Direct Costs) – (monthly)

   d. Budget Planning Report (submitted with Annual Advertising & Marketing Plan (Proposed Plan for Labor and Other Direct Costs) – (yearly at Planning Conference)

   e. Ad hoc financial data/reports – (when requested)

2. Management Reports Required – Submitted to CNRC N9, COR:

   a. Project Status Report (weekly)

   b. Ad hoc queries and reports – (when requested)

3. Leads Management Reports – Submitted to CNRC N912

   a. Standard NALTS Generated Reports:

(1). Analytical Reports

(a). Feedback Analysis

(b). Feedback Analysis Region Summary

(c). Feedback Analysis CNRC Summary

(d). Lead Production

(e). Waterfall Report

(f). Local Leads Analysis

(g). Monthly Status Summary

(h). Newspaper Tracking

(i). Direct Mail Tracking

(j). Other Media Tracking

(2). Operational Reports

(a). List of Leads

(b). Summary List of Accessions

(c). Upcoming Overdue Leads

(d). Daily Counts

(e). Master Ad Plan

(f). Detail Ad Plan

(g). Newspaper Ad Plan

(h). Direct Mail Ad Plan

(i). Other Media Ad Plan

b. Additional Required/Special Query Reports

(1). USPS Add/Delete of Zip Codes (monthly)

(2). NRD/NRS Directory (monthly)

(3). Postage (monthly)

(4). Telephone Analysis (weekly/monthly/FYTD)

(5). Inventory/Audit (monthly/quarterly)

(6). Local Direct Mail Reports

(7). Navy Marketing Intelligence (NMI) Reports (monthly)

(8). NMI Flash Report (weekly)

(9). NMI CNP Executive Reports (monthly/quarterly)

(10). NASCAR Report (weekly)

(11). Diversity Leads and New Contracts Report (monthly)

(12). Project Status Report (Is this referencing the CE weekly report provided to N92?)

(13). Ad hoc queries for reports/data from NALTS or other automated systems used in leads management.

3. Leads/Contract Reports

   a. Weekly "dashboard" reports of leads generated, conversion rates and contracts by source/channel/events marketing venue and compared to previous year. Reports are in graphical format.

   b. Monthly "dashboard" reports of leads generated, conversion rates and contracts by source/channel/events marketing venue and compared to previous year. Reports are in graphical format.

   c. Internet Activity Report (to include site visits, "click-throughs", year-to-date visits, length of

visits, etc.). Report format will be provided by CNRC.

d. Various ad hoc queries for reports and data as requested by CNRC management.

ATTACHMENT J-4
EVENT MARKETING SERVICES

The following event marketing services are currently utilized by Navy and initially the agency will be required to continue to provide these same services/properties to CNRC in support of recruiting events across the country until the agency recommends changes and Navy agrees:

1. FLIGHT SIMULATORS. Yearly services to provide three (3) mobile movie-ride flight simulators (two each twenty-seat simulators and one eight-seat simulator) through Pulseworks Simulation, LLC. The simulators are designed for outdoor use at events such as air shows, state fairs, fleet weeks and other locations determined by the Navy Recruiting Command. Services provided include all management, operation, maintenance, scheduling and coordinating needs and aspects of the simulators including leads collection relating to program events.
2. EXHIBIT DISPLAYS. Yearly services to provide, support, and transport three (3) portable exhibit displays/booths to Navy Recruiting special events across the country. The CNRC event schedule includes air shows, diversity fairs/conferences, Fleet Weeks, professional and collegiate sporting events, and major conventions. The events are intended to promote interest and attract high

quality candidates to the Navy and normally range from one to five days in length: eight to twelve hours each day. The exhibit displays must be attractive, large-scale, multi-functional, information booths that provide a setting at each scheduled event for Navy recruiters to share information with prospective Navy candidates about career opportunities offered by the Navy. Services to be provided include design, fabrication/construction, expedited transportation, management, set-up, breakdown, maintenance and on-site security, where venue is unsecured, of the exhibit displays during the performance period.

3. NASCAR SHOWCAR AND SIMULATOR: Yearly services to provide Navy showcar and simulator appearances at events to support awareness, leads generation activities, and recruiting nationwide. Navy NASCAR showcar must be equipped with an operable engine and be a replica of the actual Navy's racecar. Services include appropriate and required set up and operation of the showcar and simulators, and leads collection and reporting. A total of 275 event/travel days are needed each year.
4. CONVENTION SUPPORT SERVICES: Yearly services to provide all elements of convention support for CNRC to attend medical, diversity, and education conventions and conferences across the country. The purpose of Navy's presence is to educate attendees on opportunities the Navy has to offer, allow recruiters to interact with potential officer or enlisted candidates, both active and reserve, and generate leads. Support services include providing management, coordination, scheduling, reservations/booth spaces,

transportation, actual booth/display units, exhibit services, set-up and dismantling of booths, and warehousing of exhibits required for each venue. CNRC estimates participation in approximately 40 events each year.

ATTACHMENT J-5
GLOSSARY OF TERMS

ACO	Administrative Contracting Officer
ADPACK	Advertising Package (contains various display and line ads)
AQD	Accession Quality Designator
CHC	Chaplain Corps
CIRIMS	COMNAVCRUITCOM Integrated Recruiting Information Management System
CNP	Chief of Naval Personnel, Washington, DC
CNRC	Commander, Navy Recruiting Command
COMNAVRESFOR	Commander, Naval Reserve Force
COR	Contracting Officer's Representative
DC	Dental Corps
DCM	Defense Contract Management
DCO	Direct Commission Officer
DD	Department of Defense
DFAS	Defense Finance and Accounting Service
DHRA	Defense Human Resources Agency
DOD	Department of Defense
DON	Department of the Navy
FAP	Financial Assistance Program

FISC	Fleet and Industrial Supply Center
FY	Fiscal Year
GPO	Government Printing Office
HPSP	Health Professional Scholarship Program
IVR	Interactive Voice Response
JAG/JAGC	Judge Advocate General Corps
JAMRS	Joint Advertising Market Research Studies
LDM	Local Direct Mail
MC	Medical Corps
MSC	Medical Service Corps
NALTS	Navy Advertising Leads Tracking System
NC	Nurse Corps
NMCI	Navy Marine Corps Intranet
NMI	Navy Marketing Intelligence
NOIC	Navy Opportunity Information Center
NRD	Navy Recruiting District
NRS	Navy Recruiting Station
NUPOC	Nuclear Propulsion Officer Candidate
OBM	Office of Management and Budget
OCS	Officer Candidate School
PAO	Public Affairs Officer
PCO	Procuring Contracting Officer
PEL	Program Eligible Lead
RAD	Recruiter Assistance Device

ROI	Return on Investment
SSP	Subspecialty
VET	Veterans
VTC	Video Teleconference

CORPORATE EXPERIENCE & PAST PERFORMANCE INFORMATION FORM				*Form __ of 5*
Name of Offeror:				
Contract Number:				
Customer Name & Location:				
Customer Point of Contact (Name & Title):				
Telephone Number (PLEASE VERIFY):				
Total dollar amount (receipts) for this contract during the past three years: (For ordering agreement, show both the annual maximum contract amount and the amount of orders actually performed.)		*2003* *$*	*2002* *$*	*2001* *$*
Number of personnel (FTE) provided per year (average):		*Period of Performance for the contract:*		*From: To:*

Detailed description of the work performed sufficient to demonstrate the relevance of the reference to the solicitation:
Quality, delivery, or cost problem(s); corrective action(s) taken; and effectiveness of the corrective action(s):
Subcontractor(s) Utilized in Performance of this contract, description of the extent of work performed by subcontractor(s), along with annual dollar value of all subcontracts:

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS COMMERCIAL ITEMS (JAN 2005)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest after Award (AUG 1996) (33 U.S.C 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77. 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

X	(1) 52.203-6,	Restrictions on Subcontractor Sales to the Government (JUL 1995) with Alternate 1 (OCT 1995) (41 U.S.C 253g and 10 U.S.C. 2402).
____	(2) 52.219-3,	Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
X	(3) 52.219-4,	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the

preference, it shall so indicate in its offer)(15 U.S.C. 657a).

____ (4)(i) 52.219-5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

____ (ii) Alternate I (MAR 1999) of 52.219-5.

____ (iii) Alternate II (JUNE 2003) of52.219-5.

____ (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

____ (ii) Alternate I (OCT 1995) of 52.219-6.

____ (iii) Alternate II (MAR 2004) of 52.219-6.

____ (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

____ (ii) Alternate I (OCT 1995) of 52.219-7.

____ (iii) Alternate II (MAR 2004) of 52.219-7.

X (7) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)).

____ (8)(i) 52.219-9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C 637(d)(4)).

____ (ii) Alternate I (OCT 2001) of 52.219-9.

____ (iii) Alternate II (OCT 2011) of 52.219-9.

____ (9) 52.219-14, Limitations on Subcontracting (DEC 1996)(15 U.S.C.637(a)(l4)).

____	(10)(i) 52.219-23,	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) ___% (Pub.L. 103-355, section 7102. and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
____	(ii) Alternate I (JUNE 2003) of 52.219-23. __%	
____	(11) 52.219-25,	Small Disadvantaged Business Participation Program–Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355. section 7102. and 10 U.S.C. 2323).
____	(12) 52.219-26,	Small Disadvantaged Business Participation Program–Incentive Subcontracting (OCT 2000) __ % (Pub.L. 103-355, section 7102, and 10 U.S.C. 2323).
____	(13) 52.219-27,	Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004).
X	(14) 52.222-3,	Convict Labor (JUNE 2003)(E.O. 11755).
____	(15) 52.222-19,	Child Labor–Cooperation with Authorities and Remedies (JUNE 2004)(E.O. 13126).

X	(16) 52.222-21,	Prohibition of Segregated Facilities (Feb 1999)
X	(17) 52.222-26,	Equal Opportunity (APR 2002) (E.O. 11246).
X	(18) 52.222-35,	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
X	(19) 52.222-36,	Affirmative Action for Workers with Disabilities (JUN 1998)(29 U.S. C. 793).
X	(20) 52.222-37,	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)(38 U.S.C. 4212).
____	(21) 52.222-39,	Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).
____	(22)(i) 52.223-9,	Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
____	(ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).	
____	(23) 52.225-1,	Buy American Act-Supplies (JUNE 2003)(41 U.S.C. 10a-10d).

____	(24)(i) 52.225-3,	Buy American Act-Free Trade Agreements-Israeli Trade Act (JAN 2005) (41 U.S.C. 10a-10d. 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub.L. 108-77, 108-78. 108-286).
___	(ii) Alternate I (JAN 2004) of 52.225-3.	
___	(iii) Alternate II (JAN 2004) of 52.225-3.	
____	(25) 52.225-5,	Trade Agreements (JAN 2005) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
____	(26) 52.225-13,	Restrictions on Certain Foreign Purchases (DEC 2003)(E.o.s. proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
____	(27) 52.225-15,	Sanctioned European Union Country End Products (FEB 2000)(E.O. 12849).
____	(28) 52.225-16,	Sanctioned European Union Country Services (FEB 2000)(E.O. 12849).
____	(29) 52.232-29,	Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
____	(30) 52.232-30,	Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X	(31) 52.232-33,	Payment by Electronic Funds Transfer - Central Contractor Registration (OCT 2003)(31 U.S.C. 3332).
____	(32) 52.232-34,	Payment by Electronic Funds Transfer - Other than Central Contractor Registration (MAY 1999)(31 U.S.C. 3332).
____	(33) 52.232-36,	Payment by Third Party (MAY 1999)(31 U.S.C. 3332).
____	(34) 52.239-1,	Privacy or Security Safeguards (AUG 1996)(5 U.S.C. 552a).
____	(35)(i) 52.247-64,	Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S. C. 2631).
____	(ii) Alternate I (APR 2003) of 52.247-64.	

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

____	(1) 52.222-41,	Service Contract Act of 1965, as Amended (MAY 1989)(41 U.S.C. 351, et seq.).
____	(2) 52.222-42,	Statement of Equivalent Rates for Federal Hires

(MAY 1989) (29 U.S.C. 206 and 41 U.S.C 351, et seq.).

___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (MAY 1989)(29 U.S.C.206 and 41 U.S.C.351, et seq.)

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (FEB 2002) (29 U.S.C 206 and 41 U.S.C. 351, et seq.).

___ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (MAY 1989) (41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and

other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpar 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(c)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause -

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004)(15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of

any public facility). the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002)(E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (MAY 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vii) 52.2-17-64, Preference for Privately-Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(3) While not required, the contractor may include in its subcontracts for commercial items a minimal

number of additional clauses necessary to satisfy its contractual obligations.

252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS Of COMMERCIAL ITEMS (JAN 2005)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

X 52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

____ 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

____ 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

____ 252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

____ 252.225-7001 Buy American Act and Balance of Payment Program (APR 2003) (41 U.S.C. 10a-10d, E.O. 10582).

____ 252.225-7012 Preference for Certain Domestic Commodities (JUN 2004) (10 U.S.C. 2533a).

____ 252.225-7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S. C. 2533a).

____ 252.225-7015 Preference for Domestic Hand or Measuring Tools (APR 2003) (10 U.S.C. 2533a).

____ 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (MAY 2004) (__Alternate I) (APR 2003) (10 U.S.C. 2534 and Section 8099 of Public Law 104-61 and similar sections in subsequent DoD appropriations acts).

____ 252.225-7021 Trade Agreements (JAN 2005) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

____ 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

____ 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

____ 252.225-7036 Buy American Act–Free Trade Agreements–Balance of Payments Program (JAN 2005) (–Alternate 1) (JAN 2005) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

____ 252.225-7038 Restriction on Acquisition of Air Circuit Breakers (APR 2003) (10 U.S.C. 2534(a)(3)).

____ 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).

X 252.227-7015 Technical Data–Commercial Items (NOV 1995) (10 U.S.C. 2320).

____ 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S. C. 2321).

____ 252.232-7003 Electronic Submission of Payment Requests (JAN 2004) (IO U.S.C. 2227).

____ 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

____ 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (_____Alternate I) (MAR 2000) (___Alternate II) (MAR 2000) (_____Alternate II)(May 2002)(10 U.S.C. 2631).

____ 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause of this contract (Federal Acquisition Regulation 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals. Alternate I (APR 2003) (10 U.S.C. 2533a).

252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631)

(End of clause)

252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (JAN 2004)

(a) Definitions. As used in this clause –

(1) Contract financing payment and invoice payment have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) Electronic form means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using one of the electronic forms provided for in paragraph (b) of this clause.

(3) Payment request means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Wide Area Work Flow-Receipt and Acceptance (WAWF-RA). Information regarding WAWF-RA is available on the Internet at https://wawf.cb.mil.

(2) Web Invoicing System (WInS). Information regarding WinS is available on the Internet at https://ecweb.dfas.mil.

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at http://www.X12.org.

(ii) EDI implementation guides are available on the Internet at http://www.dfas.mil/ccedi.

(4) Another electronic form authorized by the Contracting Officer.

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, the contract administration office, and the payment office.

(d) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payments requests.

(End of clause)

SF 1440 CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED N00600-00-D-6048-VJBB	PAGE 2	OF 3
	NAME OF OFFEROR OR CONTRACTOR: CAMPBELL-EWALD		

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0503	LOT VI - OPTION V	[redacted]	LOT	[redacted]	[redacted]

FFP - Additional
Advertising Services to:
Acquire additional media
consisting of, but not
limited to, television, radio,
internet, etc. to increase

Navy's share of voice, promote Navy brand awareness, and generate eligible leads.

Work shall commence immediately upon award of this order to develop a proposed Media Plan detailing recommended media purchases and associated costs. The Media Plan will be submitted to CNRC, Code N9, within 15 working days after award of the order for review and approval prior to implementation.

	PURCHASE REQUEST NUMBER N6671505RC83204 ACRN AA Funded Amount - [redacted]	NET AMOUNT [redacted]
050301	LOT VI - OPTION V FFP – Services - Agency Segment Rates Per Hour TBO	
050302	LOT VI - OPTION V FFP - Other Direct Expenses Additional Media - [redacted]	

ACCOUNTING AND APPROPRIATION DATA

ACR:AA 1751804.22NA 000 66715 068888
2D C83204 66715601924Y
AMOUNT: [redacted]
PURCHASE REQUEST NUMBER
N6671505RC83204

ESTIMATED BILLING SCHEDULE:
To be submitted with Media Plan

CLINS	DELIVERY DATE	UNIT OF ISSUE	QTY	FOB	SHIP TO ADDRESS
0503	19 May 06		[redacted]	DEST	CNRC MILLINGTON
050301	19 May 06			DEST	CNRC MILLINGTON
050302	19 May 06			DEST	CNRC MILLINGTON

1. Invoices shall be submitted at the end of each month.
2. The delivery order will be paid by DFAS-COLUMBUS CENTER, NORTH OPERATIONS
3. Refer all questions to Edna Delk at (901) 874-9406 or e-mail edna.delk@navy.mil

DUNS: 00597658 CAGE: 1P2G8

OPTIONAL FORM 338 (4-85)
Sponsored by GSA
FAR (48 CFR) 53.110

SF1449 Continuation Sheet	N00800-00-D-6048-VJBB	Page 3	Of 3
	Name of Offeror / Contractor: Campbell-Ewald		

ADDITIONAL MEDIA UNDER CLIN 0503
STATEMENT OF WORK

1. Background.

Contract Line Item Number 0502 under Contract N00600-00-D-6048 is established for Navy Recruiting Command to acquire space charges and media placement in support of each annual Navy Recruiting Strategic Plan. If additional space charges and media placement are needed, task orders may be placed under CLIN 0503, Additional Advertising Services.

2. Objective.

CNRC requests Campbell-Ewald acquire additional media consisting of, but not limited to, television, radio, internet, etc. to increase Navy's share of voice, promote Navy brand awareness, and support recruiting efforts. Campbell-Ewald shall use its best efforts to obtain the lowest commercial rate available for media placement. All media discounts and rebate credits shall accrue to Navy Recruiting Command.

3. Deliverables.

Campbell-Ewald will provide a proposed Media Plan to CNRC Code N9 within 15 working days after award of the order for review and approval prior to implementation.

4. Period of Performance.

Work will commence immediately upon award of the order and completion is scheduled for 19 May 2006.

Navy 2006 Wireless / Mobile

Tactical Media Recommendations

17 March 2006

CAMPBELL EWALD [Logo omitted]

Agenda

- Mobile Marketing
- 2005 Learning
- 2006 Strategy
- 2006 Tactical Recommendations / Examples
- Timing / Next Steps

Mobile Marketing

- Mobile marketing is a two-way communication via text, graphics, pictures, audio (voice), and/or video that can reach anyone, anywhere, at anytime

Source: *Wikipedia*

Wireless / Mobile Media

- **Mobile Marketing via cell phone is the most nonstandardized medium today:**
  - Over 500 handset models
  - Over 20 domestic cellular service providers/carriers
- **Nonetheless, Mobile Marketing holds great promise:**
  - Currently, over 190 million cellular/mobile customers in the U.S.
  - 66 million use Short Message Service (SMS) text messaging
  - 68% of 18-24 year olds are actively text messaging
  - 25 million access info using Wireless Application Protocol (WAP)
  - 20 million have interacted with an ad via SMS
  - 33% of young adults willing to receive mobile marketing in exchange for something of value
  - 35% willing to trade personal information for relevant offers
  - 90% of text messages are opened within 5 minutes of receipt

* Jupiter Media Research. December 2005

2005 Mobile Learning

- AvantGo was the top volume lead generator for the initial test period
  - provided the best conversion rate
  - But cost-per-EL was more than 25% above allowable level
- CPM buy on VindiGo proved to be the very least cost efficient
- SMS text message blasts were almost as inefficient
- Cost-per-Call pricing model was most cost efficient
  - However, tactic produced low call volume
- Click-to-Call tactic emerged as most cost-effective
  - Third Screen Media delivered 6.9% call rate
  - Go2 directory
  - Averaged 9,000 calls/week

05 Navy go2 with Click-to-Call

[graphics omitted]

05 Navy Third Screen w/Jun.p Page

Banner Ad Click-through (Jump) Page

[graphics omitted]

2005 Mobile Strategy

Objective:

- Generate Active Duty GEN leads

Strategies:

- Continue with Navy "Free Video" offer via sponsored content
- Build on 2005 learning / best practices
- Extend / expand Click-to-Call tactics
  - Alternative to requiring prospects to dial an 11-digit 800#
  - Keep the interaction simple
  - Eliminate extra steps for the prospect

2006 Recommendation

Vendor	Description	Cost
Enpocket / go2	Directory	$150,000
MindMatics	Broker	$50,000
Third Screen	Network	$50,000
VoodooVox	Service	$100,000
		$350,000

Enpocket / go2

- go2 is one of the most visited wireless websites in the U.S. today
  - Hosted over 24million unique mobile user sessions in 2005
  - Represents 85% of U.S. mobile customer base
- Demographics align well with the Navy target:
  - 39% age 14-35
  - 65% male
- go2 provides local directory search information across many major wireless carriers:
  - Verizon
  - Cingular
  - Sprint [graphic omitted]
  - T-Mobile

  - *Source: go2 User Survey, 2005*

Enpocket / go2

[graphic omitted]

Enpocket will....

- Develop and serve 3 WAP banner ads across the go2 directory pages
  - 4.5MM Impressions
  - Use click-to-call connection to Navy call center
- Development of 5 WAP landing pages
  - WAP site hosting
  - Database management
- Real-time online reporting

Enpocket / go2

[graphics omitted]

Banner Jump Page with Click-to-Call

MindMatics

- MindMatics is an international mobile marketing list broker with double opt-ins from registrations for directories (e.g. Zingy), date/match services, plus wallpaper and ring-tone downloads
- MindMatics has over 5 years experience and 3,000 mobile marketing campaigns worldwide and adheres to the MMA's best practices
- MindMatics will deliver a Navy branded SMS (text) direct mobile marketing "push" program to the cell phones of 150,000 Adults 18-24 from an opt-in list of over 3 million

MindMatics SMS Text

[graphic omitted]

- Wireless user may then select the number to be connected to the Navy's call center
- For mobile handsets that do not have "click-to-call" capacity, prospects will be able to dial the number directly
- MindMatics' servers will support a "fwd to a friend" feature for a viral / referral marketing component

* * *

mindmatics

CAMPBELL-EWALD
30400 Van Dyke Avenue
Warren, MI 48093

– Service Proposal for U.S. Navy Direct Mobile Marketing –

4/2/2006

MindMatics LLC
415 Madison Avenue, 20th Floor
New York, NY 10017
United States
t. 212 355-8245
f. 212 355-8276

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   2. Direct Mobile Marketing: Click-to-Call
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A. Service Scope

1. Project Objective

Campbell-Ewald is a full-service marketing agency, deploying campaigns for clients across multiple different media. For its client, the U.S. Navy, Campbell-Ewald Media is looking for a mobile marketing partner to execute a wireless marketing project from May to June 2006. The client's goal is to increase viable recruiting recruitment leads in order to enroll 38,000 new sailors this year.

MindMatics is the industry's leading full-service provider of mobile marketing and technology solutions with more than five years experience and over 3,000 mobile marketing campaigns conducted worldwide. MindMatics enables clients to reach and interact with their customers via their mobile handsets, anytime, anywhere. With Campbell-Ewald, MindMatics will create an overall, integrated mobile marketing strategy for to implement for the Navy and then execute utilizing MindMatics' carrier-grade infrastructure.

MindMatics has identified three primary business objectives:.

a. Increase leads for U.S. Naval recruits via mobile marketing

b. Enable response and interactivity with potential applicants via mobile phones

c. Reinforce the Navy's brand with every interaction the brand

MindMatics' programs offer clients the greatest possible flexibility in mobile marketing and tactics, from straight media buys to complete creative

development and deployment. Further, MindMatics strictly adheres to MMA standards to protect our clients and ensure the highest response rates.

2. Direct Mobile Marketing: Click-to-Call

The purpose of this type of program is to deliver to a mobile phone a marketing message via SMS text messaging. Each message will have an embedded phone number, which the recipient can easily use to call the Navy's call center. As mobile marketing requires an opt-in from the end user, MindMatics will offer the Navy a direct mobile marketing push program utilizing MindMatics' opted-in list of users. Every message delivered will be branded with the U.S. Navy's name.

MindMatics delivers direct mobile marketing messages for clients directly to consumers' phones, utilizing MindMatics' managed mobile list. This list has over 12 million qualified, pre-opted-in mobile users (more than 3 million U.S.) who have requested that marketing offers be sent to them. This list can be broken down by multiple demographics including geography, wireless carrier, age group, and gender. This access and target-marketing are unique opportunities that MindMatics delivers to its clientele.

For the Navy, MindMatics can specifically select men and women between the ages of 18 to 24 to receive mobile marketing messages. This increases the chances of generating eligible leads for the Navy and reduces unnecessary media expenditure.

For example, MindMatics on behalf of the Navy sends out targeted SMS text messages of, "Money for college. Unique career opportunities. The Navy makes it possible! Get your DVD by clicking or calling 800-XXX-XXXX to apply. <U.S. NAVY>" The wireless

user can then select "call number' (or similar menu option), to connect directly to the Navy's call center. For mobile handsets that do not have such features, the applicant will have the correct phone number recorded for them to dial manually.

Direct mobile marketing campaigns have proven to have a significantly higher response rate than direct mail or direct e-mail. This is partially due to the fact that the mobile arena/SMS world is "zero spam"

B. Project Scope

MindMatics will provide its carrier-grade infrastructure to facilitate the mobile marketing campaign. MindMatics is responsible for all necessary gateways, short-codes, and connectivity to deploy the programs for Campbell-Ewald.

MindMatics will utilize its list of more than three million U.S. opted-in mobile numbers to send direct mobile marketing messages.

MindMatics will develop and manage each mobile marketing campaign. This will be done in conjunction with Campbell-Ewald. Text messages in the U.S. are limited to 160 characters.

MindMatics suggests that Campbell-Ewald create the text message(s) and supply a schedule of when the messages are to be delivered to MindMatics. MindMatics will then schedule the messages for delivery. Further, MindMatics can supply additional guidance on crafting the message(s).

MindMatics will provide reporting tools to enable Campbell-Ewald to actively monitor the Navy mobile campaign.

C. Pricing Proposal

Direct Mobile Marketing Click-to-Call	Price
Navy Mobile Marketing (May to June 2006) • Set-Up/Connectivity/Gateway • Program Development • Campaign Management • Customer Targeting • Delivery/Push from MindMatics' opted-in list (150,000 total)	[redacted]

D. References

* * *

E. General Conditions

1. Term

Prices are firm through April 6, 2006.

2. Non-disclosure

This proposal is exclusively for Campbell-Ewald and will not be shared with third parties in any form or used for any purpose other than evaluation of the proposal.

3. Payments

All fixed and one-time costs are due upon contract signing.

4. Taxes

All project items are exclusive of applicable taxes.

5. Terms & Conditions

The attached MindMatics Terms & Conditions apply.

We hope that this proposal fits your expectation and look forward to receiving your signed approval. We welcome any further questions you may have.

New York, 4/6/2006

Best regards,

Jordan Greene
Sales Director
MindMatics LLC

Project Acceptance

We accept the offer of MindMatics LLC for the services described above for a target launch on _____ 2006.

Campbell-Ewald	**MindMatics, LLC**
_____	_____
Date	Date
_____	_____
Signature	Signature
Daniel Rioux	Jordan Greene
_____	_____
Name (Print)	Name (Print)
VP, Associate Media Director	Sales Director
_____	_____
Title / Position	Title / Position

Terms and Conditions

1. TERMS, DEFINITIONS & ORDERS

1.1. These terms and conditions (the "Terms") shall apply to the provision of Aggregation Services, and, with respect to any Campaign, Advertising Services, Database Services and Media Creation Services (together the "Services") and the Deliverables by the Company to the Customer.

1.2. In these Terms, the following words and expressions shall have the respective meanings set forth below:

"Address" means with respect to any Campaign any phone number or email address or the like to which any Advertising Services are directed in such Campaign.

"Advertising Services" means with respect to any Campaign, sending or receiving Messages, as specified in any Order.

"Aggregation Services" means with respect to any Order, facilitating or permitting Customer to send or receive a fixed number of Messages, as specified in such Order.

"Applicable" Jurisdiction" means any jurisdiction (a) in which any Content or Personal Data is developed on to or through which it is delivered hereunder and (b) with respect to Personal Data, all jurisdiction(s) in which the relevant individual (1) resides and (2) from which he or she sends Personal Data or (3) in which he or she receives any Personal Data.

"Campaign" means an advertising campaign described with particularity in a Quotation.

"Company" means MindMatics LLC, having an office at 415 Madison Avenue 20th floor, New York, NY 10017, United States.

"Confidential Information" means all information designated as such by either party in writing together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either party or information which may reasonably be regarded as the Confidential Information of the disclosing party.

"Consumer" means any individual receiving any Outgoing Message or sending any Incoming Message.

"Consumer Content" means the Content of any Incoming Message.

"Content" means all content, including without limitation, all text, graphics, still and moving pictures, audio, audio-visual material, software, information and data (a) contained in any Message or (b) delivered to Company by Customer (including without limitation, as applicable, Addresses) for use in any Campaign.

"Customer" means the person, company, firm or organization for which Services are to be performed as identified in the Order.

"Customer Content" means all Content that are to be provided by the Customer to the Company to be used in any Message or in delivering the Services or the Deliverables.

"Database Services" means the use by Company of Addresses supplied by Company or its licensors for a Campaign.

"Deliverables" means any item delivered by the Company under these Terms which has been designed, developed or adapted using the Media Creation Services.

"Incoming Messages" means fixed or wireless messages using any Technology originating from a Consumer in accordance with any Order.

"Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United States, the United Kingdom and Germany).

"Media Creation Services" means design and development services including but not limited to design and development of Messages using any current formats such as GIF, JPEG, Tiff; design and production of mobile value added services; interactive and rich media banners; games; flash animations with sound; and TV-Spots;

"Message" means any Incoming Message and any Outgoing Message, sent or received pursuant to an Order.

"Nonconforming Content" means any Content that (a) infringes the rights, of any third party, including without limitation, intellectual property

rights, privacy rights, moral rights and rights to withhold or condition consent to use of one's image or name or the like, (b) fails to comply with any law or regulations in any Applicable Jurisdiction, (c) is not sent for a lawful purpose; (d) is defamatory, offensive, abusive, pornographic, obscene or menacing (as those terms are defined in any Applicable Jurisdiction) or is intended to harass or annoy or includes sexist, hostile or racist references or wrongfully discloses any privileged or private information or constitutes an invasion of anyone's privacy; (e) is not age-appropriate; (f) is delivered to Company by or on behalf of Customer without having been checked using the latest commercially available software to ensure that it contains no viruses, worms, spyware or the like; (g) in the case of any Outgoing Message, fails to comply with any applicable advertising guidelines, including without limitation, ICC guidelines on advertising and marketing on the Internet, ICSTIS guidelines and the E-Money regulations; (h) in the case of any Address, is not eligible for permissible use in the applicable Campaign in accordance with laws or regulations in any Applicable Jurisdiction (and without limiting the foregoing, if any Applicable Jurisdiction requires that no Message be sent to an Address in unless the intended recipient shall have "opted in" to receive such Message, no such opt-in shall have occurred); or (i) is otherwise not in compliance with the Terms.

"Order" means an order for the Services and/or Deliverables placed by the Customer using the

Company's order form and specifically referencing a Quotation.

"Outgoing Message" means any fixed or wireless message using any Technology sent by the Customer or by Company on Customer's behalf, in either case pursuant to any Order.

"Personal Data" has the meaning attributed to "personal data" in the European Union Data Protection Directive 95/46/EC ("Directive") and consistent with the privacy standards of the Safe Harbor Privacy Principles framework of the United States Department of Commerce ("Principles") or any successor or supplement to the Principles or equivalent national implementation thereof and specifically includes without limitation any personal data (a) comprised in or relating to any message, (b) that is an Address, or (c) included in or related to any Return Message;

"Quotation" means a firm written price quotation (signed by an authorized representative of Company and addressed to Customer) to perform all, but not less than all of the Services described in a set of complete specifications attached thereto;

"Return Message" means any message or communication, including without limitation, any email or SMS, sent by or on behalf of any recipient of any Message.

"Scheduled Commencement" means as to any Campaign described in any Order, the scheduled commencement of that Campaign.

"Technology" means any of SMS, MMS, WAP, GPRS, UMTS, email or other web-based technology.

1.3. No legally binding contract shall exist until the Company has confirmed its acceptance of the Customer's Order in writing. Services may only be ordered by submitting an Order that specifically references those Terms and the Company's Quotation, as described in Section 3.

1.4. In the event and to the extent only of any conflict between these Terms and the Order, the Order shall prevail but only in relation to those Services and/or Deliverables placed under that Order. No terms in any purchase order or other correspondence delivered by Customer shall apply to any Order hereunder, unless expressly countersigned by Company.

2. SERVICES & CONTENT

2.1. In the case of Orders specifying Aggregation Services, Company will not be providing Advertising Services, Database Services or Media Creation Services. Customer shall be solely responsible for all Messages.

2.2. If Customer does not order Media Creation Services for any Campaign, then Customer shall be solely responsible for timely delivery to Company of the Message to be used in such Campaign. If Customer does not order Database Services for any Campaign, then Customer shall be solely responsible for timely delivery to Company of all Addresses to be used in such Campaign.

2.3. Customer shall ensure that (a) the Customer Content is delivered to the Company at least five (5) business days before applicable Scheduled Commencement unless otherwise agreed in writing and (b) the Customer Content contains no Nonconforming Content.

2.4. If Customer requires Media Creation Services, all Customer Content that is intended for inclusion in the Campaign must be supplied to the Company at least 15 business days before the applicable Scheduled Commencement.

2.5. Company is not liable for Customer Content supplied and is not obliged to store the Customer Content for any particular period of time or to return any materials to the Customer unless otherwise agreed in writing.

2.6. Company shall supply the Services and the Deliverables in accordance with these Terms and any additional terms set out in the confirmed Order.

2.7. Customer will be obliged to approve all Deliverables before the start of a Campaign. This may take the form of an SMS, email, web format or other means. The Customer will be informed about the required approval and shall either approve the Deliverables or report any errors or omissions in the Deliverables by the end of the following business day after receipt of the Deliverables. Thereafter the Deliverables are considered to be approved and the Customer will be responsible for any cost of subsequent changes or adjustments.

2.8. Customer reserves the right to review the Deliverables immediately upon Scheduled Commencement and to request that the Company's makes further changes or adjustments; *provided* that any such requests are made to the Company within the first week after Scheduled Commencement. Customer will be charged for such changes or adjustments at the rate specified in the then-current price list.

2.9. The Company reserves the right to refuse, suspend or terminate Campaigns on editorial grounds or where any Customer Content is Nonconforming Content; provided that Company's acceptance of any Customer Content is not an endorsement by Company of such Customer Content or an approval indicating that no Nonconforming Content is contained therein; nor is it a waiver of Customer's obligation to ensure that no Customer Content will be Nonconforming Content.

2.10. Time is not of the essence of the agreement unless specifically agreed in writing by the Company.

3. ESTIMATES AND QUOTATIONS

3.1. Estimates will be provided by the Company to the Customer where the Customer's requirements are not capable of precise definition at that time. Such estimates shall impose no binding obligation on either party.

3.2. Quotations will be provided either upon receipt of a written specification from the Customer, or where as a result of meetings, correspondence or other communication, precise definition of the

required service can be produced by the Company and accepted by the Customer. Such specification shall form an integral part of the quotation.

3.3. Any Quotation submitted by the Company is without engagement on either party's part and no contract shall be made between the Company and a Customer unless, before the stated expiration date of the Quotation (and in any event no more than thirty(30) days after the date of the Quotation), Customer countersigns the Quotation and submits an Order hereunder specifically referring to and attaching the countersigned Quotation.

3.4. If a Quotation does not include specific provisions for the timing of the performance of the Company's obligations, the performance of the contract will be subject to available capacity and manpower.

3.5. Quotations are submitted by the Company on the basis that the whole work quoted for will be ordered. The price is based on information available to the Company on the date of the Quotation and may be adjusted in the event of any increase in costs between that date and the date of performance. The Company reserves the right to amend Quotations where typographical clerical or other errors have been made.

3.6. Unless otherwise stated Quotations will (a) exclude all taxes, including without limitation, sales taxes, and (b) be subject to Company inspection of all Customer Content.

3.7. The Company reserves the right to adjust its charges in accordance with Section 5.1.

4. PAYMENT

4.1. In consideration of the supply of the Deliverables and the performance of the Services in accordance with these Terms, the Customer shall pay the agreed price as set forth in the Quotation or in the Company's then-current price list.

4.2. Payment in full by Customer for Services and Deliverables will be required within 30 days of the date of the invoice unless otherwise agreed in writing. Full payment for all Aggregation Services must be made in advance of commencement of the Services.

4.3. Interest will be charged on outstanding amounts at a rate equal the lesser of 4% above the base lending rate of Citibank Bank or the highest rate allowed by law, in either case computed on a daily basis.

4.4. Company is entitled at its sole discretion to charge reasonable administration fees for handling overdue invoices.

4.5. Depending on the type of Campaign ordered and whether it has involved Media Creation Services, invoicing will generally be based on measures such as, but not limited to, number of contacts, deliveries or click-throughs in line with the Interactive Advertising Board standard.

4.6. The Company will provide the Customer with a Campaign report including, but not limited to, the number of contacts, deliveries or click-throughs. This report will be made available either online

through password-protected internet access, via fax or email or any other method as agreed from time to time.

4.7. Invoicing will occur after completion of a Campaign; provided that Company reserves the right to invoice monthly for Campaigns having a duration of more than 30 days.

4.8. If the Customer disputes any of the prices payable or costs invoiced by the Company then the Customer will settle by due date any such prices payable and charges that are not in dispute and will provide the Company with full details of any query or dispute within 30 days of receipt of the invoice to which it relates. The invoice will be accepted if no objection is made in writing within 30 days of receipt.

4.9. If a Campaign is not launched on the agreed time and date, the Company will use commercially reasonable efforts to fulfill the delivery of the Campaign within reasonable time thereafter, subject to approval by the Customer. Should such attempts fail, the Customer has the right to receive a refund for the undelivered part of the Campaign.

4.10. Payment shall be made in United States dollars either by check representing available funds made out to the Company, or by wire or other bank transfer. Other payment methods shall only be accepted upon written approval of the Company.

5. PRICE ADJUSTMENTS

5.1. The company reserves the right to adjust its published price list. Customers will be informed

via post, fax, or email of any price adjustments one month in advance of the effective date of any price change. If Customer objects in writing to the price adjustment within two (2) weeks after receipt, Company shall have the right to cancel any Order to which the price adjustment would have applied. Except as otherwise specified herein, price adjustments shall be effective upon the date announced in the adjustment notice.

6. DISCOUNTS AND AGENCY CONDITIONS

6.1 No discounts will be applied to the Advertising Services invoices unless expressly confirmed in writing by the Company.

7. INTELLECTUAL PROPERTY

7.1. All Intellectual Property Rights in the Customer Consent shall remain the property of the Customer or its licensors, as applicable.

7.2 The Customer grants, or shall procure the granting to the Company, its agents and sub-contractors a non-exclusive royalty-free license throughout the duration of each Campaign to display, copy, reformat, edit, alter, amend, adapt, electronically store, use, distribute and download the Customer Content or elements of the Customer Content to the extent necessary to allow the Company to meet its obligations hereunder.

7.3. Except as provided for by Section 7.1 all Intellectual Property Rights which have arisen or may arise in connection with the supply of the Deliverables and performance of the Services (including without limitation, in the advertising

formats, software, programs and associated documentation that is created by, on behalf of or in conjunction within the Company to fulfill an Order or requirement of the Customer) shall vest in the Company and Customer shall have no rights therein by estoppel, implied right or otherwise.

8. WARRANTIES

8.1. The Customer warrants and represents that:

8.1.1. it has full capacity and authority and all necessary consents to enter into and perform its obligations hereunder and that these Terms are entered into by a duly authorized representative of Customer;

8.1.2. the provision and use of the Customer Content and the exercise by or on behalf of the Company of the rights licensed by the Customer in Section 7 shall not infringe any Intellectual Property Rights of any third party;

8.1.3. No Customer Content will be Nonconforming Content.

8.2. The Company warrants and represents that:

8.2.1. it has full capacity and authority and all necessary consents to enter into and perform its obligations hereunder and that these Terms are entered into by a duly authorized representative of the Company; and

8.2.2. the Services will be supplied and rendered by appropriately experienced,

qualified and trained personnel with all reasonable skill, care and diligence; and

8.2.3. it shall discharge its obligations hereunder with reasonable skill, care, diligence and generally accepted industry practice.

9. EXCLUSION OF WARRANTIES

9.1. EXCEPT AS EXPRESSLY STATED IN THESE TERMS, ALL DELIVERABLES AND ALL SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. THE COMPANY DISCLAIMS ALL WARRANTEES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

9.2. Customer recognizes that successful delivery of any Message depends upon, among other things, availability of networks and proper interaction of many network operators. Company's responsibility hereunder is to properly address each Message and submit it to a network operator for further transmission. No failure by such network operator or any subsequent network operator shall give rise to any claim hereunder.

10. LIMITATIONS OF LIABILITY AND INDEMNITY

10.1. Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence.

10.2. The Company shall have no obligation, duty or liability whatsoever in contract, tort, (including negligence, breach or statutory duty and any other tort) or otherwise, except as otherwise expressly provided in these Terms.

10.3. NEITHER THE COMPANY NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING OR TERMINATING THE USE OF ANY SERVICE OR DELIVERABLE SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR USE OF THE SERVICE, OR DELIVERABLE OR INABILITY TO USE THE SERVICE, OR ARISING OUT OF BREACH OF ANY WARRANTY, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION, OR LOSS OF TECHNOLOGY RIGHTS, EVEN IF SUCH PERSON OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE COMPANY SHALL IN ADDITION HAVE NO RESPONSIBILITY OF ANY KIND FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER'S INFORMATION CARRIED OVER WIRELINE OR WIRELESS

TELECOMMUNICATIONS PROVIDERS' FACILITIES AND NETWORKS. THE COMPANY SHALL IN ADDITION HAVE NO RESPONSIBILITY FOR THE SELECTION, RETENTION, OR ACTS AND OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICE, INCLUDING THOSE WITH WHOM THE COMPANY MAY CONTRACT TO OPERATE THE COMPANY SERVICE, REGARDLESS OF THE CAUSE OR THE FORM OF ACTION. THE COMPANY AGGREGATE MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS IN CONNECTION WITH ANY ORDER SHALL NOT EXCEED THE TOTAL AMOUNTS PAYABLE BY CUSTOMER THEREUNDER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

10.4. Customer shall indemnify the Company its agents, contracting carriers and network operators and the officers and employees of each of them (collectively, the "Indemnified Parties") and hold the Indemnified Parties fully and effectively harmless from and against all costs, claims, demands, damages, liabilities, actions and proceedings, including reasonable attorneys' fees, made by any person or entity or governmental agency (a) arising out of or in connection with (1) any breach of these Terms by Customer, or (2) the provision or use of the Service by any person or (3) the conduct of Customer's business; or (b) arising out of any claim or proceeding brought against an indemnified Party alleging that Content supplied or transmitted hereunder (1)

infringes, misappropriates or interferes with the intellectual property rights of any third party, or (2) contains or consists of Nonconforming Content.

10.5. The Company has the right, but is not obliged to, check any Content to verify the adherence to the Terms. The Company has the right to refuse any Customer Content or terminate any Campaign or Order that is in breach of the Terms, current legislation, or good taste without notice to the Customer. The Company will notify the Customer of such action promptly upon taking such action. The Customer is bound to the agreed payment for the Campaign or Order, unless it can be proven that the Company has taken such action in bad faith. Any further claims for compensation or refunds are excluded.

10.6. If the Company's equipment, systems or programs or those of its subcontractors fail, the Company shall use its reasonable endeavors to restore the same to proper operating condition, but shall have no liability or other obligation in respect thereof.

10.7. If the Company makes an error in or omission of or from a Deliverable, it will correct this error as soon as reasonably practicable and without charge to the Customer for the correction. Additionally, the Company (at its own discretion) may reduce the charges for the Deliverable as is fair and reasonable having regard to the nature of the error or omission.

10.8. Company shall have no liability to the Customer or any other person for or in respect of any

Content, or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other act or omission of the Customer.

11. CONFIDENTIALITY

11.1. Save as stated in Section 11.2 below, each party undertakes to the other that it shall:

11.1.1. use Confidential Information of the other party only for the purposes of carrying out duties and obligations under these Terms;

11.1.2. not disclose the other party's Confidential Information in whole or in part to any other person except where the disclosure is (i) with the other party's prior written consent; or (ii) is made in the proper performance of these Terms (iii) to its employees, contractors or agents who need access to such Confidential Information in order to perform such party's obligations under these Terms and who have each agreed to comply with this Section 11.

11.1.3. take all reasonable precautions to ensure that all Confidential Information is treated as confidential and is not disclosed or used other than for the purposes of these Terms.

11.2. The provisions of Section 11.1 shall not limit the use or disclosures of information which:

11.2.1. is or becomes public knowledge other than by breach of these Terms; or

11.2.2. has been or may be lawfully acquired from any third party owing no direct or

indirect obligation of confidentiality to the originally disclosing party hereunder; or

11.2.3. is independently developed without reference to the other party's Confidential Information.

11.3. If either party is obliged to disclose, in compliance with any applicable law, court or in accordance with the order of any administrative or regulatory body of competent jurisdiction, such disclosure shall be permitted hereunder, provided that the compelled party shall notify the other party as promptly as practicable and shall cooperate with such other party in its efforts to protect the confidentiality of the compelled disclosure.

11.4. The undertakings of confidentiality contained in this Section 11 shall survive for three years following expiration or termination of these Terms. Each party shall bear responsibility for breaches in this Section 11 by its employees, contractors and agents.

12. TERMINATION

12.1. The Company shall be entitled to terminate the agreement in the event of any breach by the Customer of any of its obligations under these Terms or failure to pay in accordance with the Terms or in the event of the appointment of a receiver or trustee over the whole or any part of the assets or of the undertaking of the Customer or in the event of a winding up, liquidation or dissolution of Customer or the entry of an order adjudicating the Customer bankrupt. The Customer shall not be entitled to terminate the

agreement without the written agreement of the Company.

12.2. in the event of any termination of any Order, Customer shall immediately pay to the Company any sums outstanding.

12.3. If the Customer wishes to cancel an Order less than one week prior to the launch date for the Campaign the full charges as outlined in the quotation shall become immediately payable.

12.4. In the event of termination of any Order, the provisions of Sections 1, 8, 9, 10, 11, 14, 15 and 16 shall survive the termination or the expiry.

13. FORCE MAJEURE

13.1. The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control; Act of God, explosion, flood, fire or accident, war or threat of war, terrorism, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

difficulties in obtaining raw materials, labor, parts or machinery; power failure or breakdown in machinery, such as telecom networks, computers and mobile phones.

14. PROTECTION OF PERSONAL DATA

14.1. If Database Services are used, Customer has no rights or claims to any information regarding Addresses or other information in such databases. All users registered within such databases have given their full permission to receive advertisements from the Company, as far as is reasonably demonstrable.

14.2 Each of Customer and Company warrants and undertakes that it shall comply with all laws and regulations in relation to the provision or use of the Services, Deliverables, Customer Content and Personal Data, and in particular but without limitation each party shall comply with the all data protection and privacy laws and regulations in all Applicable Jurisdictions and will cooperate with each other in their respective compliance efforts.

15. GOVERNING LAW

15.1. These terms and conditions and all other terms of the contract shall be governed and construed in accordance with the laws of New York, irrespective of its choice of law or conflict of law principles. Any dispute of any kind arising out of or relating to these Terms shall be brought exclusively in the state or federal courts sitting in New York. The United Nations Convention on

Contracts for the International Sale of Goods shall not apply to these Terms and Conditions.

15.2. The parties shall attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with these Terms. If the matter is not resolved by negotiation within 14 days of the claim or dispute arising (or such other period as may be agreed between the parties), the parties shall refer the dispute to a qualified independent mediator. If the parties fail to reach agreement in the mediation within 14 days of the mediator being appointed (or such other period as may be agreed between the parties), then any dispute or difference between them may be pursued in court; provided that nothing herein shall be construed to prevent either party from immediately pursuing equitable relief in court.

16. GENERAL CONDITIONS

16.1. No provision of or right under these Terms shall be deemed to have been waived by any act or acquiescence on the part of either party, its agents or employees, but only by an instrument in writing signed by an authorized officer of each party. No waiver by either party of any breach of these Terms by the other party shall be effective as to any other breach, whether of the same or any other term or condition and whether occurring before or after the date of such waiver. No variation to these Terms shall have any effect whatsoever unless agreed in writing by a duly authorized representative of the Company. No

employee or agent of the Company has authority to vary these Terms orally.

16.2. Each party represents that it is acting on its own behalf as an independent contractor and is not acting as an agent for or on behalf of any third party. These Terms and the relations hereby established by and between the parties do not constitute a partnership, joint venture, agency or contract of employment between them. There are no third party beneficiaries of these Terms.

16.3. All communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt by the addressee at the addresses set forth in the Order, or such other address as either party may specify by notice sent in accordance with this Section.

16.4. In the event any provision of these Terms shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof. The parties agree that they will negotiate in good faith or will permit a court or arbitrator to replace any provision hereof so held invalid, illegal or unenforceable with a valid provision which is as similar as possible in substance to the invalid, illegal or unenforceable provision.

16.5. In the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in any purchase order or other document relating to the interactions contemplated by these Terms, the terms and conditions set forth herein shall prevail.

16.6. Captions of the sections and subsections of these Terms are for reference purposes only and do not constitute terms or conditions of these Terms and shall not limit or affect the terms and conditions hereof.

16.7. Words such as herein, hereinafter, hereof and hereunder refer to these Terms as a whole and not merely to a section or paragraph in which such words appear, unless the context otherwise requires. The singular shall include the plural, and each masculine, feminine and neuter reference shall include and refer also to the others, unless the context otherwise requires.

16.8. These Terms, together with each Order, contain the entire understanding of the parties hereto with respect to the transactions and matters contemplated hereby, supersede all prior agreements and understandings relating to the subject matter hereof, and no representations, inducements, promises or agreements, whether oral or otherwise, between such parties not contained herein or incorporated herein by reference shall be of any force or effect.

16.9. The parties agree that they have participated equally in the formation of the agreement that includes these Terms and that the language of these Terms shall not be presumptively construed against either of them.

16.10. Customer shall not be permitted to assign its rights or obligations hereunder whether in whole or in part without the prior written consent of the Company. The Company may assign its rights and obligations hereunder in whole or in part.

Status: October 12, 2005

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals, *Plaintiff,* v. CAMPBELL-EWALD COMPANY, a Delaware corporation, *Defendant.*	Case No. 10-cv-2007-DMG (CWx) **DECLARATION OF JOSE GOMEZ IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** Honorable Dolly M. Gee Date: April 8, 2011 Time: 2:30 p.m. Ctrm: 7 (Spring Street)

DECLARATION OF JOSE GOMEZ

I, JOSE GOMEZ, hereby aver, pursuant to 28 U.S.C. § 1746, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and would testify thereto if called as a witness in this matter.

1. I am an adult over the age of 18, and a resident of the State of Illinois. I am fully competent to make this Declaration, and make such Declaration. I am providing this declaration as the plaintiff in this case.

2. When I decided to file this lawsuit I understood that I had a responsibility and duty to act in the best interests of the other people who received unauthorized text messages like I did from the defendant or the companies it hired to send the messages.

3. Because of this obligation, I rejected defendant's individual offer to me that would not have provided others who received the messages the compensation the law provides for defendant's sending of unauthorized text messages.

4. Attached to this Declaration as Exhibit 1 is a copy of my 5/12/06 – 6/11/06 Cingular Wireless bill that I received from AT&T Mobility. On page 12 it shows that I received and was charged for a text message from shortcode "43704," which was the Navy text message identified in my lawsuit.

5. I never provided my consent to the defendant or anyone else to receive text message advertisements from the defendant or from the Navy.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 22, 2011.

/s/ Jose Gomez
Jose Gomez

mindmatics

[graphic omitted]

Full Service Mobile

Mobile **mindmatics**

Data Quality Control Process

- **During our Quality Control Process, each data partner needs to meet the following criteria:**
  - to have an opt-in/opt-out process in place
  - to push no more than one SMS per user per week
  - to opt-out users from program if it is requested by the user
- **Features**
  - manage data based on the MMA & DMA guidelines
  - handle number portability, device capability, cleansing and purge
  - create value around users by performing data matching/Appending
  - protect users from "WISPAM"
  - provide users with relevant content, offers and services

Opt-in/Opt-out Policy

- Users need to be properly opted-in through registration process and/or terms and conditions:
- The user can opt-out at any time from the web-site by accessing "My Account"
- The user can also opt-out during the campaign by replying "out", "quit", "leave" or "off"

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS

* * *

2. CONTRACT No.
N00600-00-D-6048

* * *

6. SOLICITATION ISSUE DATE
14-Jul-2000

* * *

17 a. CONTRACTOR/ CODE . . .
OFFEROR
CAMPBELL-EWALD

* * *

CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS, FAR 52.212-4 (MAY 1999)

* * *

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

* * *

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals, *Plaintiff,* v. CAMPBELL-EWALD COMPANY, a Delaware corporation, Defendant.	Case No. CV10-2007-DMG (CWx) Assigned to Hon. Dolly M. Gee **DECLARATION OF DANIEL RIOUX IN SUPPORT OF CAMPBELL-EWALD'S MOTION *FOR SUMMARY* JUDGMENT** Date: December 9, 2011 Time: 3:00 p.m. Ctrm: 7 (Spring Street)

I, DANIEL RIOUX, declare as follows:

1. I am a Director, Media Planning, at Campbell-Ewald Company ("C-E"). C-E is a global advertising agency that provides marketing services to clients throughout the United States, including the United States Navy. Except as otherwise indicated, I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

2. As a Director, Media Planning, I am responsible for Navy Recruiting Command's paid media planning and buying for national advertising. I have been employed by C-E since October 1996 and began working exclusively on the United States Navy account in November 2002. I am responsible for C-E Media Department's relationship with the United States Navy.

3. C-E's contractual relationship with the United States Navy began in 2000. Through advertising and media initiatives authorized and approved by the United States Navy, C-E has helped the United States Navy achieve its annual and quarterly recruitment goals. As of June 2011, the United States Navy has met its active duty general enlisted recruitment goals for 126 consecutive months.

4. On or about September 21, 2005, C-E and Navy Recruiting Command ("NRC"), the United States Navy's recruitment arm, entered into a fee-based contract for advertising and media to support the United States Navy's recruitment efforts. The United States Navy requested that "Campbell-Ewald acquire additional media consisting of, but not limited to, television, radio, internet, etc. to increase Navy's share of voice, promote Navy brand awareness, and support

recruiting efforts." The Navy contract and documents relating to the contract are maintained in the ordinary course of business at C-E. A true and correct copy of the September 21, 2005 contract is attached as Exhibit 1.

5. On or about September 27, 2005, an amendment was issued to "provide additional media" and to "increase funds for work." A true and correct copy of this amendment, maintained in the ordinary course of business, is attached as Exhibit 2. On January 4, 2006, the contract was amended to provide additional media services and a larger budget pursuant to a revised media plan submitted by C-E and approved by NRC. A small component of the budget consisted of "wireless/mobile marketing." True and correct copies of this amendment and C-E's revised media plan, maintained in the ordinary course of business, are attached as Exhibits 3 and 4.

6. Given its young target audience, it is important to the United States Navy's recruiting goals to engage in exploratory or emerging media and to be at the forefront of new and innovative media forms, including media made possible through technological advancements. NRC shared this vision and objective with C-E and authorized funds specifically for the purpose of exploring new media opportunities. *See* "Exploratory Media" references in Exhibit 3 at page 2 and Exhibit 4. Text messaging was an emerging form of media in or about 2005.

7. On February 13, 2006, C-E issued a request for proposal in connection with the United States Navy's desire to engage in wireless advertising. The goal of the "Navy Recruiting Command's wireless strategy for 2006 [was] to generate leads" and to recruit "nearly

38,000" sailors. One of the options for which proposals were requested, the "Navy's current wireless best-practice," was a "Click-to-Call" campaign, which would "allow[] prospects to connect directly with [the United States Navy's] call center where required lead information is gathered and fed daily into the Navy's leads data base." A true and correct copy of C-E's request for proposal on behalf of the United States Navy is attached as Exhibit 5. Requests for proposals, such as the one prepared for the United States Navy, are prepared in the ordinary course of business at C-E.

8. In response to C-E's request for proposals, MindMatics LLC submitted proposals to C-E dated February 22, 2006 and April, 2006. True and correct copies of the proposals received from MindMatics in C-E's ordinary course of business describing MindMatics' proposed SMS text message campaign for the United States Navy are attached as Exhibits 6 and 7. I reviewed both of these proposals. In its proposals, MindMatics promoted itself as "the industry's leading full-service provider of mobile marketing and technology solutions with more than five years experience and over 3,000 mobile marketing campaigns conducted worldwide." Exhibit 6 at page 3 and Exhibit 7 at page 3. It recommended a "direct mobile marketing push program" that would "deliver to a mobile phone a marketing message via SMS text messaging." Exhibit 6 at page 3 and Exhibit 7 at page 3. MindMatics stated that "[e]ach [text] message will have an embedded phone number, which the recipient can easily use to call the Navy's call center" and "[e]very message delivered will be branded with the U.S. Navy's name." Exhibit 6 at page 3 and Exhibit 7 at page 3.

9. The proposed mobile marketing program from MindMatics stated that it would "deliver[] direct mobile marketing messages for clients directly to consumers' phones, utilizing MindMatics' managed mobile list." Exhibit 6 at page 3 and Exhibit 7 at page 3. MindMatics assured that its "list ha[d] over 12 million qualified, pre-opted-in mobile users (more than 3 million U.S.) who have requested that marketing offers be sent to them." Exhibit 6 at page 3 and Exhibit 7 at page 3. MindMatics also represented that it "strictly adhere[d] to [Mobile Marketing Association] standards to protect our clients and ensure the highest response rates." Exhibit 6 at page 3 and Exhibit 7 at page 3. MindMatics' proposal further provided that it would "develop and manage each mobile marketing campaign," provide its "carrier-grade infrastructure to facilitate the mobile marketing campaign," "schedule the messages for delivery," and would be "responsible for all necessary gateways, short-codes, and connectivity to deploy the programs[.]" Exhibit 6 at page 7 and Exhibit 7 at page 4.

10. On or about March 17, 2006, I presented a powerpoint presentation to the United States Navy that I principally authored entitled "Navy 2006 Wireless/Mobile Tactical Media Recommendations." I discussed each page of this presentation with Lee Buchschacher, C-E's primary contact at NRC, over the telephone. I had provided him a copy of the presentation by email prior to our telephone conference. Client presentations or "decks," as they are referred to at C-E, are prepared by C-E for its clients in the ordinary course of business. A true and correct copy of this March 17, 2006 deck prepared for and presented to the United States Navy is attached as

Exhibit 8. It outlined 2006 wireless/mobile media recommendations for the United States Navy's consideration and approval in accordance with the 2006 contract. In preparing the deck, I relied on the responses C-E had received to its February 2006 request for proposals for the United States Navy from third-party vendors, including MindMatics.

11. One of the options presented in the March 17, 2006 deck was MindMatics' text messaging proposal. The deck to the United States Navy specified that as part of this proposal, "MindMatics will deliver a Navy branded SMS (text) direct mobile marketing 'push' program to the cell phones of 150,000 Adults 18-24 from an opt-in list of over 3 million." *See* Exhibit 8 at 14. Because it was the United States Navy's campaign and would be branded with the United States Navy's name, C-E was required to "gain CNRC [Commander Navy Recruiting Command] approval to proceed" and to "gain final Navy approvals on creative executions." See Exhibit 8 at 19.

12. C-E obtained approval from NRC to proceed with MindMatics' text message proposal. To the best of my knowledge and belief, I obtained this approval from Mr. Buchschacher by telephone in late March or early April 2006. The United States Navy also had to approve the text message copy. A true and correct copy of the text message approved by Mr. Buchschacher, maintained in C-E's client files in the ordinary course of business, is attached as Exhibit 9.

13. Between May 10 and May 24, 2006, text messages were sent by MindMatics to potential Naval recruits between the ages of 18 and 24. C-E did not send the text messages. It did not dial the numbers or operate or maintain control over any automated dialing

equipment that placed the calls. C-E did not have the technology or capability of doing so. C-E never saw or took possession of the mobile numbers used for the United States Navy's May 2006 text message recruiting campaign. MindMatics handled the deployment, transmission and delivery of the text messages in accordance with its proposals, including the use of its own SMS short code. It alone had possession of the list of "over 12 million qualified, pre-opted-in mobile users (more than 3 million U.S.)" that was used to send the text messages. *See* Exhibit 7 at page 3. Attached as Exhibit 10 is a true and correct copy of an email from MindMatics sales representative Jordan Greene to me dated April 3, 2006 confirming that MindMatics "will scehdule [sic] your pushes, and send confirms when they are completed." C-E regularly maintains electronic mail in the ordinary course of business.

14. The May 2006 text message campaign was a United States Navy recruiting campaign. The text messages were sent to potential Naval recruits on behalf of the United States Navy and were sent solely in the United States Navy's interests and for its benefit. At all times, C-E was acting on behalf of the United States Navy at its direction, control, and oversight and for purposes of military recruitment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of October, 2011, at Warren, Michigan.

/s/ Daniel Rioux

Daniel Rioux

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals, Plaintiff, v. CAMPBELL-EWALD COMPANY, a Delaware corporation, Defendant.	Case No. CV10-2007-DMG (CWx) Assigned to Hon. Dolly M. Gee **DECLARATION OF LEE BUCHSCHACHER IN SUPPORT OF CAMPBELL-EWALD'S MOTION FOR SUMMARY JUDGMENT** Date: December 9, 2011 Time: 3:00 p.m. Ctrm: 7 (Spring Street)

I, LEE BUCHSCHACHER, declare as follows:

1. I retired from employment with the U.S. Navy in April 2011 after 13 years of service with Navy Recruiting Command ("NRC"). The last position I held at NRC was Strategic Marketing Plans Officer in the Marketing, Advertising, & Public Affairs Division. As Strategic Marketing Plans Officer, I was responsible for reviewing and approving campaign proposals and coordinating campaigns with third parties and Campbell-Ewald Company ("C-E"), the Navy's advertising agent. In addition to my civilian employment, I served in the U.S. Marine Corps on active duty for 5 years reaching the rank of Staff Sergeant. I also actively served in the Army Reserve for 27 years and retired as Sergeant Major. In total, I devoted 41 years of service to the government of the United States. Except as otherwise indicated, I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

2. NRC is the recruiting arm of the United States Navy whose sole mission is to recruit young men and woman to serve our country in the Navy. Recruitment is a primary objective of the Navy and is essential to the Navy's continued viability in this nation's military defense system. The Navy strives to meet annual and quarterly recruitment goals. These recruitment goals have ranged from 35,000 to 55,000 new general enlisted recruits per year over the last decade. The Navy strives to recruit, develop, and retain the best and brightest personnel our nation has to offer.

3. To help achieve its recruitment goals and spread the Navy's recruiting message, in 2000, NRC contracted with C-E to provide the Navy a full range of

marketing and media services, including print, radio, television, internet, and other media. C-E is the Navy's advertising agent of record and advertising plays a major role in the Navy's recruitment efforts. With C-E as its agent since 2000, the Navy has been able to meet or exceed its annual general enlisted active duty recruitment goals. A detailed summary of the Navy's recruitment goals and statistics is available on NRC's website located at http://www.cnrc.navy.mil/PAO/facts_stats.htm. A true and correct copy of a printout from this webpage dated September 15, 2011 is attached as Exhibit 1.

4. NRC maintains control and oversight over its campaigns and its agent, C-E. First, pursuant to the Navy's contract, C-E hosts an annual strategic conference for NRC at which time C-E presents a yearly plan for review, discussion and approval that is based on NRC's recruiting goals for the upcoming year and its stated needs. NRC has approximately 30 days to make modifications to the strategic plan presented. The NRC Rear Admiral must approve the plan for the year. In 2006, NRC Rear Admiral Jeffrey Fowler approved the 2006 strategic plan.

5. After the yearly strategic plan is approved, NRC oversees the campaigns. Each campaign requires NRC approval, oversight and review. NRC must approve the campaign as well as the copy or creative that bears the Navy name. There is daily monitoring of campaigns by NRC Program Advertising Managers as well as divisional oversight at NRC. NRC also monitors the results of its campaigns through regular communication with C-E. NRC is involved in other aspects as well, such as the preparation and approval of the media itself.

6. In December 2005, Daniel Rioux and his media staff presented NRC with a communications plan providing special project recommendations for media programs, a true and correct copy of which is attached as Exhibit 2. The recommendations contained in the plan had already been revised and/or approved by the NRC Rear Admiral. The plan contains an overview of various media plans, including print, out-of-home, emerging media, television, radio, magazines, tours and events, sponsorships, internet and exploratory media. Under "Exploratory Media" was an option for "Wireless/Mobile Marketing" to "Expand on Navy's Direct Response efforts via SMS [text messaging] and WAP [wireless application protocol]." *See* Exhibit 2 at 15. Consistent with NRC's policies and procedures, this document was provided to the Director of Advertising, Division Chiefs (including myself), Program Advertising Managers, and NRC Advertising Consultant. I received a copy of it and reviewed the plan along with my Program Advertising Managers and others, and approved it on behalf of NRC or the "CNRC [Navy Recruiting Command] technical clients," as it is referenced in the plan. *See* Exhibit 2 at 2. It was also reviewed by Fleet Industrial Supply Center (FISC), the government contracting office, which administers and oversees the Navy's contracts. FISC issued delivery orders necessary to fund the various campaigns. The plan was executed.

7. Given its young target audience, it is important to NRC's recruiting goals to engage in exploratory or emerging media and to be at the forefront of new and innovative media forms, including media made possible through technological advancements. NRC shared this vision and objective with C-E and authorized funds for

the purpose of exploring new media opportunities. *See* Exhibit 2 at 15. Text messaging was an emerging form of media in or about 2005.

8. On or about March 17, 2006, C-E presented a powerpoint presentation to NRC entitled "Navy 2006 Wireless/ Mobile Tactical Media Recommendations," which outlined "Exploratory Media" options consistent with the Navy's goals. I received a copy of this presentation. A true and correct copy of a March 20, 2006 email from NRC's primary contact at C-E, Daniel Rioux, in which I was copied, attaching this presentation is attached as Exhibit 3. The presentation offered 2006 wireless/mobile media recommendations for NRC's consideration and approval.

9. One of the media options presented was a text message proposal from MindMatics, LLC. The proposal stated that "MindMatics will deliver a Navy branded SMS (text) direct mobile 'push' program to the cell phones of 150,000 Adults 18-24 from an opt-in list of over 3 million." *See* Exhibit 3 at 14. This proposal needed to be approved by NRC since it would be sent on its behalf and branded with the Navy's name. C-E was required to "gain CNRC [Navy Recruiting Command] approval to proceed" and to "gain final Navy approvals on creative executions." *See* Exhibit 3 at 19.

10. In or about May 2006, the United States Navy undertook the text message campaign proposed by MindMatics to the mobile phones of potential recruits. It was a direct mobile program in which a recruiting message bearing the Navy's name was sent to the cell phones of U.S. adults between the ages of 18 and 24—the Navy's target recruiting audience. The text message included a "click-to-call" telephone number for

potential recruits to call the Navy's call center and receive a free Navy video. The Navy participated in the shooting of the video that was referenced in its text message to potential Naval recruits.

11. I was the primary contact from NRC for this text message campaign. During that time, I held the position of Deputy Director, Marketing and Advertising Plans Division. As Deputy Director, I was responsible for the supervision of the various Program Advertising Managers and the review, oversight and approval of Navy campaigns. Cornell Galloway, who was an Enlisted Program Advertising Manager at that time, and I worked closely with C-E on the Navy's May 2006 text message recruiting campaign, and provided Navy oversight and approval. The May 2006 text message campaign was a short and minor campaign part of a much larger strategic plan for the Navy in 2006.

12. Mr. Galloway and I authorized and approved the text message campaign proposed by MindMatics on behalf of NRC. I also reviewed, revised, and approved the creative for the Navy's text message. A true and correct copy of an email from C-E Assistant Account Executive Daidria Grayson to me dated April 27, 2006 providing the creative for my review and approval is attached as Exhibit 4. In an email dated April 28, 2006, I provided edits to the creative and approved the final text message. A true and correct copy of that email is attached as Exhibit 5. After consulting with others at NRC, I changed the phrase "Prove it in the Navy" to "Do it in the Navy" because the word "prove" is more closely aligned with the philosophy of the Marines.

13. I understand that C-E coordinated, on behalf of the Navy, with MindMatics to implement the Navy's

May 2006 text message recruiting campaign. The Navy did not have direct dealings with MindMatics. Mr. Galloway and I worked directly with our agent, C-E. I was aware that MindMatics would be responsible for the campaign's implementation, including sending the text messages to potential Naval recruits.

14. The May 2006 text message campaign was the Navy's, not C-E's, recruiting campaign. The text messages were sent to potential Naval recruits on behalf of the United States Navy and were sent solely in the Navy's interests and for its benefit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of October 2011, at Millington, Tennessee.

/s/ Lee Buchschacher

Lee Buchschacher

[web site graphics and headers omitted]

Navy Recruiting Command
"RECRUIT QUALITY TODAY – BUILD FOR TOMORROW"

Public AffairsOffice

FY2011 Facts and Stats
Navy Recruiting Command ...
Seeking the 'Best and Brightest'
(Navy Recruiting mission runs on a fiscal year October through September)

Headquartered in Millington, Tennessee, NRC is located just north of Memphis on board Naval Support Activity Mid-South. Nationwide, Navy Recruiting covers the entire United States with twenty-six (26) Navy Recruiting Districts (NRDs) commanded by two (2) Navy Recruiting Regions. Today, nearly 7,000 active and reserve military, civilian and contract employees make up the command. Of those, more than 6,350 active and reserve officer and enlisted Sailors man more than 1,450 recruiting stations and centers throughout the U.S., Guam, Puerto Rico and Europe. You can see how widely dispersed Navy recruiting really is across the United States, and for most areas of the country, Navy recruiters are the only visible face of the Navy.

The number of active and reserve enlisted and officer production recruiters currently totals 4,603 (As of August 2011). This is the average daily number of field recruiters across the United States. Working out of their individual Navy Recruiting Station or NRS, these recruiters call on approximately 25,782 public and 6,177 private high schools nationwide.

Additionally, they access more than 2,750 two-year colleges and 2,490 four-year colleges. Approximately one hundred fifty-four NROTC units are located on U. S. college campuses.

Navy Recruiting Command's main objectives: First, increase the quality of the total force by aggressively seeking qualified Sailors in 71 total ratings in the active and reserve, with emphasis being placed on specific areas: Officer and Enlisted diversity, Medical officers, Chaplains, SEALs, Navy Special Warfare, Navy Special Operations, Special Warfare Combatant-Craft Crewmen, Explosive Ordnance Disposal, Diver, Hospital Corpsmen and Reserves. Second, in order to smooth the flow of recruits into boot camp, NRC maintains a healthy pool of young men and women in the Delayed Entry Program (DEP). Management and mentorship of the applicants in DEP is critical. Third, NRC continues to provide needed support to our great nation and Overseas Contingency Operations (OCO) demands by meeting the mission requirements for the other ratings that support NSW/NSO missions.

Even though the active enlisted mission is the largest mission number overall, the active enlisted goal is not the only goal NRC must reach. Reserve enlisted, as well as active and reserve officer missions, each present a different challenge.

FY06 Goals

Active duty enlisted – 36,656
Attained – 36,679 (100%+)
Reserve enlisted – 11,180
Attained – 9,722 (87%)

FY11 Goals

AC enlisted – 33,400
RC enlisted – 8,679
AC officer – 2,180
RC officer – 1,809
Total goal = 46,068

FY07 Goals

Active duty enlisted – 37,000
Attained – 37,361 (100%+)
Reserve enlisted – 10,602
Attained – 10,627 (100%+)
AC officer – 1571
RC officer – 2011
Total goal = 51,184

FY08 Goals

Active duty enlisted – 38,419
Attained – 38,485 (100%+)
Reserve enlisted – 9,122
Attained – 9,134 (100%+)
Active Duty officer – 1,962
Reserve officer – 1,200
Total goal = 50,703

FY09 Goals

Active duty enlisted – 35,500
Attained – 35,527 (100%+)
Reserve enlisted – 7,743
Attained – 7,793 (100%+)

Active duty officer – 2,202
Reserve officer – 1,198
Total goal = 46,819

FY10 Goals
Active duty enlisted – 34,140
Attained – 34,180 (100%+)
Reserve enlisted – 6,654
Attained – 6,669 (100%+)
Active duty officer – 2,403
Reserve officer – 1,600
Total goal = 44,797

NAVY RECRUITING ENLISTED ACTIVE GOALS/ACCESSIONS

FY	Goal	Accessions	End-Strength
2011	33,400		
2010	34,140	34,180	329,629
2009	35,500	35,527	330,621
2008	38,419	38,485	332,436
2007	37,000	37,361	338,735
2006	36,656	36,679	349,788
2005	37,635	37,704	365,900
2004	39,700	39,868	373,800
2003	41,359	41,376	382,235
2002	46,150	46,155	385,051

2001	53,520	53,690	377,810
2000	55,000	55,147	373,193
1999	52,524	52,595	373,046
1998	55,321	48,429	382,338
1997	50,135	50,135	395,564
1996	48,206	48,206	416,735
1995	48,637	48,637	434,617
1994	53,892	53,892	468,662
1993	63,073	63,073	509,950
1992	58,203	58,203	541,886
1991	68,311	68,311	570,262
1990	72,846	72,846	579,417
1989	95,186	95,186	592,652
1988	93,939	93,939	592,570
1987	92,909	92,909	586,842
1986	94,878	94,878	581,119
1985	87,593	87,593	570,705
1984	82,907	82,907	564,638
1983	82,790	82,790	557,573
1982	92,784	92,784	552,996
1981	104,312	104,312	540,219
1980	97,678	97,678	527,153

NAVY RECRUITING RESERVE ENLISTED GOALS/ACCESSIONS

FY	Goal	Accessions
2011	8,679	
2010	6,534	6,669
2009	7,743	7,793
2008	9,122	9,134
2007	10,602	10,627
2006	11,180	9,722
2005	11,491	9,788
2004	11,000	11,246
2003	12,000	12,772
2002	15,000	15,355
2001	15,250	15,344
2000	18,410	14,907
1999	20,455	15,240

Who We Recruit

Navy Recruiting is responsible for recruiting young men and women into the **Active Duty and Naval Reserve enlisted force.** We also recruit for **Officer Candidate School, Officer Indoctrination School** and process applications for **Naval Reserve Officer Training Corps.** Navy Recruiting does not recruit candidates for the Naval Academy.

NSW/NSO

Special emphasis is placed on specific NSW/NSO programs: SEALs, Navy Special Warfare, Navy Special Operations, Special Warfare Combatant-Craft Crewmen, Explosive Ordnance Disposal, Diver, Hospital Corpsmen and Reserves.

Diversity

Diversity is a strategic imperative for the United States Navy. Navy leadership has clearly articulated their commitment to a diverse Navy. **Improving diversity** within the Navy is not only the right thing to do; it is the smart thing to do. Increasing the number of minority officers and the Quality of minority Sailors in the Navy are critical elements for ensuring the productivity, growth, and success of this institution that we serve. **Greater diversity** enhances the Navy's flexibility and expands our collective problem-solving capabilities. We defend the greatest nation in the world. The strength of our diversity directly and irrefutably helps us do so. The Navy will stay committed to improving that strength.

Advertising

Our national brand and advertising campaign featuring the new slogan, **"America's Navy - A global force for good™,"** was launched in October 2009.

"Life Accelerator™." It allows a person to enter in personal preferences, likes and dislikes about career fields, which are then matched to the numerous opportunities in the Navy. We also pro·.ide a Spanish-language version of our recruiting Website, ELNAVY.COM. Both sites are designed to answer the questions of potential recruits and their families,

recognizing the need to include the family In enlistment decisions.

Quick Notes

The Navy is constantly seeking to enlist the best and brightest young men and women to succeed in today's high-tech Navy environment.

High school graduates have shown by their performance their success in establishing and achieving an academic goal, and are more likely to succeed in Navy programs where strong emphasis is put on individual educational development.

The Navy offers world travel and the long tradition of "Navy camaraderie" - forging strong friendships with "shipmates."

World-class Navy training and education gives Sailors highly marketable skills and puts them on the fast track to a bright future.

[contact information omitted]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE DOLLY M. GEE, JUDGE
PRESIDING

JOSE GOMEZ, individually and on behalf of a class of similarly situated individuals,	)	No. 10-CV-2007-DMG
Plaintiffs,	)	
VS	)	
CAMPBELL-EWALD COMPANY,	)	
Defendant.	)	

Reporter's Transcript of Proceedings
Motion Hearing
Los Angeles, California
FRIDAY, MARCH 30, 2012

* * *

[3]

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COURT CLERK: Item 5. 10-2007-DMG. Jose Gomez versus Campbell-Ewald Company.

Counsel, state your appearances.

MR. McMORROW: Michael McMorrow for the plaintiff.

MR. MALLOW: Good afternoon, Your Honor. Michael Mallow, Loeb & Loeb, on behalf of the defendant.

MS. REILLY: Good morning, Your Honor. Christine Reilly for the defendant, Campbell-Ewald.

MS. WYTSMA: Laura Wytsma also on behalf of Campbell-Ewald.

MS. SILLER: Meredith Siller also on behalf of Campbell-Ewald.

THE COURT: Good afternoon, Counsel.

I don't have a written tentative for you today, but I do believe that this case will turn on whether or not there is derivative sovereign immunity. So, I'd like to ask counsel to focus their arguments on that issue today.

I'm going to give each side approximately 15 minutes to present their arguments. You can certainly use less than that if you wish.

So, since it's your motion, Mr. Mallow, or [4] Ms. Wytsma or Reilly, I'll allow you to go first.

MR. MALLOW: Thank you, Your Honor. Michael Mallow on behalf of the defendant, Campbell-Ewald.

Your Honor, in 45 pages the plaintiffs can try to plant a lot of trees to obscure the forest, and I think that's where we are in this case. So, if I may, what I'd like to try and do is, step back from the trees, take a good look at the forest; and then, I think after you take a look at the forest, you'll understand, Your Honor, why derivative sovereign immunity –

THE COURT: I think I kind of understood from the beginning, because I inserted a very strategic footnote into one of my Orders in which I sort of indicated that there had not been briefing on the subject. So, now I have received more briefing than I wished to have on the topic.

MR. MALLOW: Well, I'm glad that we did not miss the strategically placed footnote, Your Honor.

Your Honor, this case is about – it's not about a contractor that builds a building or that creates an aircraft. This is about a contractor who is hired and – to act as the Navy's agent to deliver, help the Navy deliver its message to the public, a message that conveys an image, a message that was intended to help the Navy perform one of its two primary functions: One is to protect the United States, and the second, and equally important, is to find people who [5] can help it to achieve that mission.

Your Honor, before you, on the Elmo is the, in fact, the text message that's at issue in this case. The text message tells you volumes about what C-E was retained by the Navy to do, and that's to communicate its recruiting message to the public. There is no commercial purpose for C-E in this. It is all about the Navy.

Now, in challenging derivative – let me step back a second.

It is uncontested that the Navy would not be liable under the TCPA if the Navy had performed all of the functions that are at issue in this case on its own.

If the Navy had drafted up the text message on its own, if the Navy had delivered the text message on its own, it is uncontested that the Navy would not be liable under the TCPA. And that's based on two

grounds: One is, the Navy is not a person as defined in the TCPA and sovereign immunity.

So, the question before Your Honor is: Can the fact that the Navy hired C-E to help it to create the message, to – and to deliver to the public, create liability where none exists. And the plaintiffs try to argue that C-E can be held liable under the TCPA, because it is not the Navy's agent. It is not working on behalf of the Navy. It is not performing the recruiting function.

[6] So, we have been focusing tremendous energy on this issue of "agency."

Now, I will tell you, Your Honor, under Yearsley and Ackerman, "agency" is not the issue. The issue is: Was C-E authorized to do what it did by the Navy, and did it work within the scope of that authorization? That's what's at issue. We spent a lot of time on "agency," but that's what's at issue. Now, we've addressed the "agency" issue because, in fact, the arguments, the facts support even that finding.

So, let's start with what the Navy says, itself.

In deposition, Lee Buchschacher, who worked for the Navy at the time that this text message was created and disseminated, testified – and this was part of the additional discovery that the plaintiffs requested subsequent to the filing of the motion for summary judgment.

Your Honor, before you on the Elmo is the quote from Mr. Buchschacher. It says: C-E doesn't do anything without the approval of the United States Navy recruiting command – or ^ somebody in it.

And that makes tremendous sense given the subject matter and given the tasks that C-E was requested to perform by the Navy. And what do I

mean by that? Your Honor, this is about the Navy. It's the Navy's name; it's [7] the Navy's message. Of course the Navy is going to control that with an iron fist. Anything that's done or said in its name impacts the Navy.

C-E corroborates what the Navy says, and deposition testimony taken after the motion for summary judgment was filed and pursuant to plaintiff's request for additional discovery. Mr. Auger says: In all instances, the commander, Navy and recruiting commands, holds the ultimately right of approval for all deliverables under the Navy contracts.

THE COURT: I don't think this is in the papers, or at least I didn't see it, but was there any "consciousness" at all at the time of this contracting relationship that there would be potentially any TCPA issues?

MR. MALLOW: Any "consciousness"? I'm not sure what Your Honor means by "consciousness."

THE COURT: Meaning that, was that a factor at all? Was it considered?

MR. MALLOW: I don't know if somebody said: Hey, let's worry about the TCPA. But we know that there was a request to have opt-in from those who were going to be contacted, probably more for public relations reasons than anything else.

And we also know that the Navy, you know, per the TCPA wouldn't be held liable for -- or is not subject to [8] the TCPA. So, I don't suspect that there was a legal analysis performed on whether the Navy's message violates the TCPA. I don't know if that answers Your Honor's question.

THE COURT: Sort of.

MR. MALLOW: Your Honor, in the Reply brief we set forth a number of specific items from the 2000-year based contract that reaffirms the control that the Navy had oversee and the messaging, any messaging that went out in the Navy's name and the Navy's message.

There has been some question in the record about whether the 2000 contract applies or the 2005 based contract applies. But as plaintiffs concede, essentially, the contracts are the same. So, indeed, that is not a, what I would call, material dispute, because whether you read the 2000 based contract or the 2005 based contract, the elements that are important for Your Honor's consideration are the same.

And what are those elements? The elements are the control aspects that the Navy has over the process that led to and culminated in the dissemination of the message at issue in this case.

THE COURT: Was the 2000 contract the very first contract, the beginning of the contractual relationship?

MR. MALLOW: It was, Your Honor.

So, what we have done, as opposed to the [9] plaintiff's purported expert, Mr. Nagle, we have identified a number of the areas that reenforce the control and authority that the Navy had over the messaging. And those are set out for you, before Your Honor: All creative work must -- is subject to review and approval by the Navy. All media plans, schedules, purchase and placement of advertisement and related approaches must be approved by the Navy. Performance of work will be subject to approaches outlined in the annual Navy recruiting strategic con -- plan and to input provided to by the CNRC, Navy recruiting command.

C-E's performance is going to be monitored. The COR, the Contracting Officer Represented, is responsible for monitoring for giving progress reports and overall technical surveillance, is responsibility – and must serve as the point of contact.

And in the contract you will see, Your Honor, that continuos contact, an intervention by the Navy, is required.

So, Your Honor, the list that I have in front of you on the Elmo is also in the Reply brief. So, I don't want to take up too much of the 15-minutes just going through what's already in the Reply brief, Your Honor.

But I do want to highlight that the contract is first and foremost the primary source to determine whether C-E had the authority to act on the Navy's behalf and whether [10] it did act on the Navy's behalf.

THE COURT: You can reverse some time for a rebuttal if you wish.

MR. MALLOW: I'd like to do that, Your Honor, but I don't see any of these little stop –

THE COURT: No, I don't use those.

MR. MALLOW: Okay.

THE COURT: You have about five minutes left.

MR. MALLOW: Okay. Let me go through it quickly, then, Your Honor.

Before you now on the Elmo is a flow chart, and it's the flow of how the text message came into existence and the Navy's involvement in the messaging.

First, a directive by the Navy: We want you to use New Media. We want you to be on the cutting edge. We want to reach the young audience, a young

audience that uses phones but uses text more than it uses the phones.

We want to be seen as a modern Navy.

This is all part of the Navy's directive and the message it wants to convey. It goes from the Navy directive to the idea of approving emerging media to using the text messaging to the actual text message to the timing of the campaign to the approval of MindMatics as a vendor to the revision of the advertise – of the copy to revisions of the copy to resumption of the campaign. As you know, the [11] campaign stopped for a brief moment.

Not coincidentally, Your Honor, if you look at the Gomez Complaint allegations, the operative allegations in the Gomez Complaint was all subject to Navy review and approval.

The fact that the text message went out and the content of the message, subject to Navy approval. The text message short code indicating the vendor, subject to Navy approval, and they approved it.

In all cases the Navy was involved. In all cases the Navy reviewed and approved.

So, then the question is: Is that enough? Under Yearsley, Your Honor, under Ackerman, that is enough. All C-E needs to establish is, that the acts that it performed were done pursuant to Navy authority, and that it worked within the scope of that authority.

What the plaintiff in his opposition has said is two things: One, C-E is not the Navy's agent. Doesn't have to be. But the facts of this case establish that, in fact, for the purposes of privilege analysis, C-E was the agent.

Plaintiffs offer Mr. Nagle whom, I submit to Your Honor, does not provide any reliable testimony to the court. Mr. Nagle focuses on one sentence of the contract, ignoring every single term in the contract that actually [12] talks about the oversight, supervision and authority that the Navy has over C-E and over the messaging of whatever nature that C-E submits and proposes to the Navy.

The other issue that the plaintiff has raised to the Court is one that, again, focuses on "agency" but tries to utilize the FTCA requirements to flash out what agency means.

Your Honor, you have to look closely at the FTCA definitions, because liability turns on whether somebody is an employee of the government. Because a contractor under the FTCA definitions is expressly exempted from the definition of "employee."

So, the level of control in assessing whether somebody is an employee or can be considered an employee, as you know, Your Honor, is far more demanding than a mere agent.

Based on derivative sovereign immunity, Your Honor, as well as the other grounds that are set forth in the C-E's motion for summary judgment, judgment on behalf of C-E as a matter of law is appropriate in this case, and we would request that.

THE COURT: All right, thank you.

Mr. McMorrow?

MR. McMORROW: Thank you, Your Honor.

Your Honor, there is -- you asked us to focus

* * *

[25]

* * *

Regardless of whether the appropriate test here that the Court wants to use is the Yearsley test, the-arm-of-the-state test or the Boyle test, under any of those tests, Campbell-Ewald clearly was well outside the scope of its authorization under the contract by sending text messages without authorization, by violating the TCPA, and by sending text messages to people who didn't want them and who were outside of the age range of recruitable people in the first place.

So, even under the Yearsley test that's urged by the defendants, the defendants still lose this motion.

THE COURT: All right. Thank you.

Mr. Mallow, you have three minutes to give me your parting shot.

MR. MALLOW: Well, Your Honor, I was hopping that beyond the parting shot, I can answer some questions that were left unanswered. So, let me run down some of the questions that Your Honor had to plaintiff's counsel, if I may, and then I can throw some parting thoughts if you might indulge me.

Your first question was: Does Doyle apply to the case, and the answer is, no, it does not.

THE COURT: You mean Boyle.

MR. MALLOW: Boyle. I'm sorry. I misspoke [26] before. It's Ackerson is the name of the case.

But the answer is: No, Boyle doesn't apply. C-E is not relying on Boyle. And in Ackerson, there was actually some discussion about Boyle, the divergence of Boyle and Ackerson, courts stated that the application of the contractor defense in the context of military equipment manufacturers is an area of law

that has since been arguably distinguished from the general Yearsley defense in Boyle Versus United Technology Corp and its progeny.

So, the answer to your question, Your Honor, is: Boyle heads to -- in one direction; Yearsley continues on in its own direction.

THE COURT: How do you respond to Mr. McMorrow's argument that there is a distinction even under Yearsley between the government explicitly instructing the contractor to do something versus the contractor coming up with a plan and then having the government approve it? What do you -- is there such a distinction?

MR. MALLOW: I am so glad you asked me that question. And, in fact, that's Item No. 3 on my list of questions to answer for Your Honor.

THE COURT: All right, I didn't mean to divert you from No. 2.

MR. MALLOW: I will jump to No. 3 since it is the topic of the moment.

[27] In fact, I disagree with counsel's reading of Yearsley. In the language -- and granted, Yearsley is a briefly worded case, which is quite refreshing; but the Court says there was, which is quite refreshing. But the court says: There was evidence tending to show that in extending the dike opposite petitioner's land, the contractor, apparently to keep and open an adequate channel for navigation between the end of the dike and the shore had accelerated the erosion by using the paddle wheels of its steamboats to increase the action of the current.

So, the Court's language focused on the contractor's decision to engage in that activity which hastened the erosion.

When the Court speaks of the authority and the purpose of the contracting task, it speaks in the general not in the specific.

So, when it talked about the application of the derivatives sovereign immunity doctrine, the case states: The Court of Appeals also found it to be undisputed that the work which the contractor had done in the river bed was all authorized and directed by the government of the United States for the purpose of improving navigation of this navigable river.

So, my reading of the case language is, the contractor was working under the broad scope of the [28] authority; but the specific decision to use the paddle boats to hasten the erosion was the contractor's decision not the government's specific decision.

So, there is nothing in Yearsley expressly saying that the government must micromanage the activities of the contractor who was seeking to be protected by derivative sovereign immunity, only the broad authorization is required.

THE COURT: What about the proposition that an agent's violation of the law always causes them to be liable for their own acts?

MR. MALLOW: Your Honor, I'm so glad you asked me that question. That is No. 4 on my list. The answer is: Yes, there is language that exempts out, that would prevent a contractor from using derivative sovereign immunity if it, in fact, violated law and exceeded its authority.

And, interestingly, if you read Ackerson, if you read Pika (phonetically spelled), and I'm sure you have, so, I don't mean it in that way, but when you read Ackerson and when you read Pika, both of the plaintiffs

in that case raise a very similar argument to what plaintiff's counsel is raising here.

I would answer it this way: The plaintiff's argument is quite circular. What the plaintiffs have said is: C-E, you know, violated the statute, the TCPA. C-E says it enjoys derivative immunity. But it really doesn't derive [29] derivative immunity because C-E violated the statute.

The question is: In exercising its authority, did -- was there a violation of the TCPA? And the Navy is not liable under the TCPA. The act that occurred is not the Navy's message, is not subject to the TCPA.

So, the fact that C-E proposed the message subject to the Navy's authority and approval, and it was disseminated, it didn't violate the TCPA when the Navy did it; and, therefore, to argued that C-E violated the contract because somehow it violated the TCPA independently of the government, makes no sense. It's a circular argument.

And if it was an argument that was acceptable, the mere allegation of a violation would defeat derivative sovereign immunity in all cases. And Ackerson, in that case, the Court rejected the plaintiff's request to discovery and rejected the plaintiff's requesting to amend the Complaint to allege a violation, very similar to the circular nature that plaintiffs are trying to do here, because they said it would be a futile act.

So, no, C-E did not exceed its authority, because the Navy did not violate the TCPA, Navy's message didn't violate the TCPA.

THE COURT: All right, your time is just about up.

MR. MALLOW: Your Honor, I would add -- you had asked the question of plaintiff's counsel whether

the [30] activities that were engaged on, engaged in by C-E constituted recruiting. In the 2000 base contract, it says, on page 18 of 43, the Navy's recruiting advertising program for fiscal year 2001 is directed toward the recruitment of approximately 60,095 personnel to fill vacancies in both enlisted and officer programs.

The 2006 contract – I'm sorry, 2005 contract, similarly says: The Navy's recruiting advertising program is directed toward the recruitment of personnel to fill vacancies and enlisted and office programs for both the active and reverse components.

So, there is no question that the advertisement program was recruiting.

There was some discussion back and forth about the opt-in requirements that C-E had proposed to the Navy. Your Honor, the record is undisputed: MindMatics represented to C-E and the Navy that they were only using double opt-in data. That was the representation by MindMatics.

What the plaintiffs would have the Court believe is, that the Navy and C-E were obligated to somehow challenge the representations that were made by MindMatics based on MindMatics' database, based on the information MindMatics had. There is no requirements under the contract or otherwise that either the Navy or C-E challenged the [31] representation that was made by MindMatics.

Last word, Your Honor. We're talking about derivative sovereign immunity, but the concept of *privilege* merges with that. And I want to leave you with a quote from Pika (phonetically spelled): Pika contents that the principals of agency do not shield ONW in this case. We disagree. Primarily because

such a conclusion ignores the Hornbook "agency" principal that: If a principal cannot be held liable for performing an act neither can the agent from the principal director to perform the act even if the agent would have been liable in the absence of such.

That's this case, Your Honor. The Navy wasn't liable. We're not leaving people without remedy, because there was no violation. And the motion – and C-E's motion for summary judgment should be granted.

Thank you, Your Honor.

THE COURT: Thank you. The motion will stand submitted.

(Court adjourned.)